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COMMITTEE ON THE RIGHTS OF THE CHILD

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Initial reports of States parties due in 1993

Addendum

ITALY

[11 October 1994]

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Introduction

1. This document contains the first report of the Italian Government, following ratification of the United Nations Convention on the Rights of the Child, adopted in New York on 20 November 1989. The report was prepared as part of the institutional activities of the Interministerial Committee for Human Rights, set up in the Ministry of Foreign Affairs.

2. In view of the difficulties arising in the Italian system in connection with the Convention, the report provides two kinds of information:

(a) Firstly, it was necessary to give an outline of existing Italian legislation and of the practice followed in Italy with regard to the matters considered and governed by the articles of the Convention. This information is based on the initial observation that Italian legislation already to a great extent complies with the Convention's principles. As a result, none of the rules contained in the Convention appear specifically to require any substantial changes in the general system currently applied in Italy for the protection of minors;

(b) Secondly, the principles underlying the Convention have given rise, ever since ratification, to many initiatives which have emphasized the importance of international rules as a means of calling for and promoting new developments, both with regard to standards affecting the child and from the point of view of structures and strictly sociological aspects.

3. The many initiatives referred to in this report include:

(a) The Decree by the Chairman of the Council of Ministers of 13 December 1991 establishing the Department of Social Affairs;

(b) The Act of 28 October 1991 on the problem of relations between television and minors;

(c) Act No. 216 of 19 July 1991 on juvenile delinquency;

(d) The Ministerial Decree of 3 June 1991 on nursery schools;

(e) The Act of 29 February 1992 establishing the Central Office for Juvenile Justice;

(f) The Act of 5 February 1992 on nationality;

(g) The Act of 5 February 1992 on the disabled;

(h) Act No. 484 of 1 December 1993 on school absenteeism.

4. This report not only draws attention to the significant innovations introduced in the law during the period 1991 to 1993, but also contains a number of references to a draft framework law on minors, which, on the initiative of the Government and, more specifically, of the Department of Social Affairs, is designed to establish guidelines for subsequent regulatory, planning and operational action by State and territorial bodies. The draft

law reflects and contains the principles set out in the Convention; it indicates the measures the Government intends to promote, in the short and medium term with a view at a later stage to improving aspects concerning children. Under each of the questions dealt with in the articles of the Convention, references are therefore made to the relevant parts of the "framework law" (the term used below to refer to the draft law). As may be observed, the policy illustrated in the draft framework law is essentially in line with Italy's long-standing legal traditions.

5. It should be pointed out that the Constitutional Court has made an effort in recent years to eliminate any rules which might not be completely in conformity with the protection of children at different stages in their lives.

6. Generally speaking, the aspects requiring special attention in Italy are problems concerning compulsory schooling and adoption. With regard to the former, efforts are being made to intensify supervision of its application, as there are still residual pockets of resistance, of various origins, particularly in rural areas. With regard to adoption, special precautionary measures enacted to defend the best interests of the child have had the effect of dragging out adoption proceedings and in practice creating a large disproportion between the number of children awaiting adoption and the number of children already adopted.

Article 1

Definition of the child

7. In the Italian system, legal capacity is acquired at birth (art. 1, para. 1, of the Civil Code), while the capacity to act, that is, to perform all acts except those for which a different age is prescribed, is acquired on reaching majority, which is generally set at 18 years (art. 2, para. 1, of the Civil Code).

8. Italian legislation attributes to minors, prior to their majority, a limited capacity, according to the ages indicated below, with regard to certain legal effects:

(a) A minor under guardianship who is over 10 years of age must be heard by the guardianship judge regarding the place where he will be brought up and the choice of studies he wishes to undertake or the art, trade or profession in which he wishes to be trained (art. 371, No. 1, of the Civil Code);

(b) At the age of 12, a minor must be heard personally in any proceedings instituted for his adoption (art. 7, para. 3, of Act No. 184 of 4 May 1983);

(c) At the age of 14, a minor may be accused in criminal proceedings (art. 98 of the Penal Code); he may bring a complaint (art. 120 of the Penal Code) and abandon a procedure once begun (art. 153 of the Penal Code); he may testify in criminal proceedings (arts. 196 and 497 of the Code of Criminal

Procedure) and in civil proceedings (art. 248 of the Code of Civil Procedure) under oath; he must consent to adoption (art. 7, para. 2, of Act No. 184 of 4 May 1983);

(d) After the age of 16, a minor must be heard before a guardian is appointed (art. 348 of the Civil Code); the inventory of his property is drawn up as far as possible in his presence (art. 363 of the Civil Code); he may apply directly to the Juvenile Court to obtain the authorization to marry (art. 84 of the Civil Code); in the event of obtaining authorization, he may consent to matrimonial commitments with the assistance of the parents, guardian or special curator (arts. 90 and 165 of the Civil Code); he acquires the capacity to make gifts under the contract of marriage (art. 777 of the Civil Code); he may recognize a natural child (art. 250, para. 5, of the Civil Code); and his consent is required before recognition by his natural parents becomes effective (art. 250, para. 2, of the Civil Code); he may perform all legal acts relating to any works he has created and bring any proceedings arising therefrom (art. 108, of Act No. 633 of 22 April 1941, as amended by art. 13 of Act No. 39 of 8 March 1975).

9. The capacity of minors to engage in a professional activity is governed by special laws (Act No. 112 of 10 January 1935 on the work permit; Act No. 264 of 29 April 1949 on recruitment; Act No. 977 of 17 October 1967 on the protection of the work of children and adolescents; Presidential Decree No. 36 of 4 January 1971 on light tasks which may be performed by children after the age of 14; Presidential Decree No. 432 of 20 January 1976 on dangerous and unhealthy tasks which may not be performed by children under the ages of 16 or 18). If employed, the minor is also authorized to exercise rights (the right to negotiate) and to bring proceedings (legal capacity) in connection with the employment contract (art. 2, para. 2, of the Civil Code). For specific cases where a child under 18 years of age may be allowed to engage in a professional activity, reference may be made to the comments on article 32 of the Convention (see paras. 186 et seq.).

10. Minors under the age of 18 cannot contract marriage (art. 84, para. 1, of the Civil Code). However, at the minor's request, the court, after receiving confirmation of the child's psychological maturity and sound motivations and after hearing the Public Prosecutor, parents or guardian, may on serious grounds authorize a minor of 16 years of age at least to marry. In that event, the minor is considered "emancipated" (art. 390 of the Civil Code) and gains the capacity to perform ordinary transactions. For transactions exceeding ordinary administration, the authorization of the guardianship judge is required (art. 394 of the Civil Code).

11. An emancipated minor may also engage in a commercial activity, with the court's consent (art. 397 of the Civil Code). In any event, the emancipated minor must be assisted by a curator. The latter may be either the spouse if aged over 18 or any other person appointed by the guardianship judge, preferably one of the parents (art. 392 of the Civil Code).

Article 2

Non-discrimination

12. Article 3 of the Constitution stipulates that all citizens are vested with "equal social status" and are "equal before the law, without distinction as to sex, race, language, religion, political opinion and personal or social status". On the basis of the practice of the Constitutional Court, the principle of non-discrimination applies equally to nationals and to foreigners and stateless persons, wherever inviolable human rights are involved.

13. It may also be noted that Italy has ratified all international human rights conventions (under United Nations and European auspices) containing express provisions concerning the principle of non-discrimination as stated in article 2 of the Convention.

Article 3

Best interests of the child

14. The trend in Italian legislation, particularly in the last 20 years, has been towards giving more attention to the problems of minors. In fact, as explained in the commentary on the following articles of the Convention, the new law of the family in Italy has expressly recognized the principle whereby priority attention should be given to the guardianship of minors. Recently, increasing efforts have been made to provide more assistance and, in particular, social welfare activities in favour of children both by enacting more specific regulations and by creating appropriate machinery for their implementation.

Article 4

Implementation of the rights recognized in the Convention

15. As mentioned in the introduction, most of the principles contained in the Convention are to be found in Italian legislation and in public and private institutions. On the whole, it may be asserted that the obligations of States parties to the Convention are already applied in the Italian system. It may be added, however, that the process of ratifying the Convention and therefore of adopting its provisions as principles of domestic law has renewed interest in the problem of the protection of minors, giving rise to further legislative and administrative initiatives.

16. Among the most significant initiatives of the Italian Government, it is worth mentioning draft framework law No. 1792, issued by the Department of Social Affairs. This draft law, which is based on the Convention, stipulates that the entire community has a duty of care towards minors, as a means of guaranteeing the recognition and effective exercise of their rights. It also establishes that State institutions should facilitate the child's education, growth and socialization in a climate of understanding, enhancement and support in order to enable the child to utilize his abilities and fulfil his aspirations in accordance with the principles of liberty, equality and solidarity. All regulatory, planning and implementation activity by State on

territorial bodies should thus contribute to an overall strategy for promoting the rights of the child and living conditions of the family, giving special attention to the economically and socially less favoured categories.

Article 5

Rights and duties of parents

A. Constitutional principles

17. Relations between spouses and with children are based on the principle of equality. In this respect, it is worth noting the main provisions contained in the Constitution and relating to article 5 of the Convention:

(a) Article 29 of the Constitution recognizes the rights of the family as a "natural association founded on marriage" and establishes that marriage "is based on the moral and legal equality of the spouses, within the limits laid down by the law for ensuring family unity";

(b) Article 30 of the Constitution stipulates that "it is the duty and right of parents to support, instruct and educate their children, even those born out of wedlock". Should the parents prove incapable, the law ensures that their obligations are fulfilled;

(c) According to article 31 of the Constitution, the State has the duty to facilitate, by economic and other means, the formation of the family and the fulfilment of the tasks related thereto, with particular consideration for large families.

B. Mutual rights and obligations of spouses

18. The principle of absolute equality between the spouses was introduced with the reform of 1975. All decisions in the interest of the family should be taken by common agreement. In the event of a disagreement, either spouse may informally apply for the intervention of the judge, who, after hearing the spouses and, as appropriate, any children of at least 16 years of age living under the same roof, will try to find a satisfactory solution. Should that not prove to be possible, the judge may adopt measures in the interest of the family, subject to an express and joint request to that effect by the spouses (art. 145 of the Civil Code).

C. Parental responsibilities towards their children

19. Marriage imposes on both spouses the obligation to maintain, educate and instruct their children, taking into account the children's abilities, natural inclinations and aspirations (art. 147 of the Civil Code). That obligation remains in the event that one or both parents, if divorced, should remarry (art. 6 of Act. No. 898 of 1 December 1970, replaced by art. 11 of Act No. 74 of 6 March 1987). Needless to say, the obligation to maintain the child is not limited to providing subsistence, but covers all the child's needs, taking into account the social background of the family and its effective economic and employment possibilities.

20. If the parents do not have sufficient means, the other legitimate or natural ascendants are bound to supply the parents with the necessary means so that they may fulfil their duties to their children (art. 148, para. 1, of the Civil Code). This obligation is not limited in time and remains valid even when the children have attained their majority; this duty of maintenance is owed until a child becomes economically independent or until the parents can show that they have given the child the means to work, thanks to the studies he has completed. In a case of need, the right to basic subsistence remains applicable without any limitation in time.

21. In the event of non-performance, the President of the Court, at the request of any person having an interest, having heard the non-performing party and having gathered the necessary information, may order that a share of the income of the obligated party should be paid directly to the other spouse or to the person incurring the expenses of the children's maintenance, instruction and education (art. 148, para. 2, of the Civil Code). The judicial order may be amended or revoked if justified by a change of circumstances (art. 148, para. 5, of the Civil Code).

D. Parental authority

22. Under the terms of article 316 of the Civil Code, the exercise of parental authority over minors is attributed jointly to both parents, in accordance with the principle of equality which underlies the 1975 reform of family law. In the event of a disagreement about matters of particular importance, either of the parents may apply, without formalities, to the judge, indicating the measures which he or she deems most appropriate. In that case, the judge, after hearing the parents and any children of at least 14 years of age, shall suggest the decisions which he deems most useful in the interest of the children and of family unity. Should the disagreement persist, the judge may attribute the power to decide to whichever parent he deems most qualified, in the particular case, to look after the interests of the children (art. 316, para. 5, of the Civil Code).

23. In the event of absence, incapacity or any other impediment preventing one of the parents from exercising parental authority, such authority is exercised solely by the other parent (art. 117, para. 1, of the Civil Code). The joint authority of the parents does not cease in the case where, pursuant to separation or divorce, or the annulment of the marriage, custody of the children is granted to one of them (art. 317, para. 2, of the Civil Code). In that case, the exercise of the authority is governed by the provisions of article 155 of the Civil Code, which will be considered in the commentary on article 9 of the Convention (see paras. 56 et seq.).

24. In the case of a natural child, the authority is exercised by whichever parent recognized the child first; it will be exercised jointly by the father and mother living under the same roof if the child has been recognized by both parents.

25. A child cannot leave the home of parents exercising parental authority; if the child leaves without permission, the parents can apply to the guardianship judge (art. 318 of the Civil Code). Parents who exercise authority over their children represent them in all civil acts and administer

their property (art. 320 of the Civil Code). They also hold a joint usufruct over their children's property and any income arising from the property must be used for the maintenance of the family and for the children's instruction and education (art. 324 of the Civil Code).

1. Loss of parental authority over children

26. Should either or both parents violate or neglect their duties or abuse the powers they hold with regard to their children with serious prejudice for the latter, the judge may terminate their authority over the children, without relieving them of their obligations. In such case, the judge may, on serious grounds, order that the child should be removed from the family residence (art. 330 of the Civil Code). A judge may restore the parental authority which has been forfeited once the grounds for the forfeiture no longer exist and there is no further risk of prejudice to the child (art. 332 of the Civil Code). Should the conduct of either or both parents not justify forfeiture of the authority, but appear prejudicial to the child, the judge may, depending on the circumstances, decide such measures as are appropriate, including removal of the children from the family residence (art. 333 of the Civil Code).

27. All steps relating to the forfeiture of parental authority or the parents' right to administer the property of the child are taken by the Juvenile Court at the request of either the other parent, the family or the public prosecutor. In such a case, the court gathers information and hears the public prosecutor. In cases where the petition is made against one of the parents, that parent must also be heard. In a case of emergency, the court may, however, issue ex officio temporary orders in the interest of the children (art. 336 of the Civil Code). The guardianship judge also ensures that the conditions established by the court for the exercise of authority and for the administration of the children's property are observed (art. 337 of the Civil Code).

2. Forfeiture of parental authority and suspension of the exercise of that authority in the event of a conviction

28. The cases in which parents may forfeit their parental authority over their children or the exercise thereof may be suspended, when they have been convicted of an offence, are established by law (art. 34 of the Penal Code). Parental authority is forfeited in the following cases:

(a) A sentence of life imprisonment (art. 32, para. 2, of the Penal Code);

(b) Conviction for offences against public morality and decency (art. 541 of the Penal Code);

(c) Conviction for incest (art. 564 of the Penal Code);

(d) Conviction for offences committed by the parents against the family status (art. 569 of the Penal Code).

The loss of parental authority also entails the deprivation of every right enjoyed by the parent over the property of the child (art. 34, para. 3, of the Penal Code).

29. The exercise of parental authority over children may be suspended in the following cases:

(a) A sentence of long imprisonment for not less than five years, unless the judge should order otherwise (art. 32, para. 2, of the Penal Code);

(b) Conviction for offences entailing abuse of parental authority, for a period of time equal to twice that of the sentence imposed (art. 34, para. 2, of the Penal Code).

The suspension of the exercise of parental authority also entails the inability, during the whole of the period of suspension, to exercise any parental right over the property of the child (art. 34, para. 4, of the Penal Code).

Article 6

Right to life

30. In connection with the right to human life, problems related to abortion are particularly important. Act No. 194 of 22 May 1987, relating to "standards for the social protection of motherhood and abortion", provides in article 1 that "the State guarantees the right to conscious and responsible procreation, recognizes the social value of motherhood and sees to the protection of human life from its commencement". The same Act stipulates that "abortion (...) is not a means of birth control" and that "the State, the regions and the local authorities, in the context of their particular powers, must promote and develop social and health services, as well as take other initiatives designed to prevent abortion from being used for birth control purposes".

31. Act No. 194/78 assigns to the family planning centres established by Act No. 405 of 29 July 1975 (in this connection, see the comments on art. 24 of the Convention in paras. 140 and 141) the task of assisting pregnant women:

(a) By informing them of their rights and of the social, health and welfare services offered by the institutions operating in the national territory;

(b) By informing them of ways of ensuring respect for the provisions of labour legislation benefiting pregnant women;

(c) By helping to overcome the causes which might prompt the woman to have an abortion.

Act No. 194/78 further provides (art. 2, para. 1) that the administration, on medical prescription and in health institutions and family planning centres, of the means necessary to perform freely chosen acts in the area of responsible procreation is also permitted for under-age girls.

32. The family planning centres and other social and health institutions have a duty to guarantee the necessary medical check-ups and to examine possible solutions with the father of the conceived child and the mother, subject to the consent of the latter and showing respect for the dignity and privacy of the father and the mother, helping her to overcome the causes which might prompt her to have an abortion and fostering all action likely to support the woman (art. 5, para. 1).

33. When the woman consults a reliable doctor, he carries out the necessary examinations, showing respect for her dignity and freedom; in consultation with the woman and the father, he evaluates the circumstances prompting her to ask for an abortion and informs her of her rights, while providing her with all relevant information on the social benefits to which she is entitled, family planning centres and social and health institutions (art. 5, para. 2).

34. When the doctor at the planning centre or social or health institution, or the reliable practitioner, is confronted with a situation which warrants urgent action, he immediately issues the pregnant woman with a certificate with which she may present herself at one of the centres authorized to carry out abortions (art. 5, para. 3). If the case is not urgent, the doctor issues the pregnant woman with a document attesting to her pregnancy, which she must sign, and invites her to postpone a decision for seven days. After reflection, the woman can present herself at an approved establishment and, on the basis of the attestation supplied to her, obtain an abortion (art. 5, para.4).

35. Under Act No. 194/78, abortions can be performed only in the following cases:

(a) Within the first 90 days, if the continuation of the pregnancy, the delivery or the confinement is likely seriously to endanger the physical or mental health of the mother, given her state of health or economic, social or family situation, or the circumstances in which she became pregnant, or in anticipation of abnormalities or deformities in the unborn child (art.4);

(b) After the first 90 days:

(i) Where the pregnancy or the confinement endangers the life of the mother;

(ii) In the event of pathologies such as those relating to serious abnormalities or deformities in the unborn child, which seriously endanger the mother's health (art. 6).

36. It is the pregnant woman herself who applies for the abortion. If she is under the age of 18, the consent of a person exercising parental authority or guardianship is required. However, if during the first 90 days there are serious reasons making it impossible or inadvisable to consult the persons exercising parental authority or guardianship or if, after being consulted, they refuse to give their consent, the guardianship magistrate may, after hearing the woman, taking account of her wishes and in the light of the

applicable reasons, authorize her to decide to have an abortion (art. 12, para. 1). Abortions can be performed only in hospitals or in an approved private health-care institution (art. 8).

37. From the penal standpoint, Act No. 194/78 imposes a prison sentence on anyone who unlawfully carries out an abortion or premature delivery (art. 17); anyone who causes an abortion without the consent of the woman (art. 18); and anyone who induces an abortion without respecting the procedures laid down in articles 5 and 8 of that Act.

Article 7

Right to a name and a nationality

38. Italian legislation protects and guarantees the right of the child to a personal identity and to the acquisition of a nationality, as laid down in article 7 of the Convention. In this connection, attention should be drawn, in the first place, to article 22 of the Constitution, which states that "no one may be deprived, for political reasons, of his legal capacity, nationality or name".

A. Right to a name

39. The right to a name is expressly recognized in article 6 of the Civil Code, which provides that "every individual has the right to a legally given name". Act No. 1228 of 24 December 1953 ("Regulations on population registers") requires any person who exercises parental authority or guardianship over children to register newborn infants in the population register of their place of residence and to notify the competent authorities of any changes in civil status (art. 2).

40. Regulation No. 1238 of 9 July 1939 ("Regulations on civil status"), still in force today, lays down that the declaration of birth must be made before the registrar within 10 days. If this deadline is not met, the registrar may require the presentation of the newborn infant (art. 67). The declaration of birth must be made by the parents or by a proxy (art. 70). The birth certificate indicates the place, day and time of birth, the child's sex and his given name (art. 71). In the case of children of unknown parentage, the registrar gives them a surname and a first name (art. 71, last para.). This regulation prohibits giving children ridiculous or undignified first names or names contrary to public order and decency or to national or religious sentiment (art. 72). Children belonging to linguistic minorities may be given first names using the distinctive signs of the alphabet of their language of origin (art. 72, para. 2). The birth certificate also indicates the parents' identity, nationality, domicile and occupation (art. 73). The regulation contains a number of provisions to guarantee the right to a personal identity of children who have been abandoned or who are of unknown parentage (arts. 75-77 bis) and protects the right of natural children to be recognized (art. 83 et seq.).

41. For the consideration of the regulations on the recognition of natural children, reference may be made to the commentary on article 8 of the Convention.

B. Right to a nationality

42. Where the right to the acquisition of a nationality is concerned, mention may be made of the recent Act No. 91 of 5 February 1992, which partially changed and amended the earlier rules contained in Act No. 55 of 13 June 1912, Act No. 123 of 21 April 1983 and Act No. 180 of 15 May 1986.

43. Act No. 91/92 recognizes and elaborates on the principles of equality between the sexes and between spouses and the principle of the recognition of individual wishes in acquiring and losing nationality by filiation and by adoption. In particular, this Act formally recognizes the right of children of Italian parents to acquire Italian nationality by birth (art. 1, para. 1 (a)); and the right of any individual born in Italian territory if both parents are unknown or stateless or if the child does not take the nationality of the parents in accordance with the law of the State to which the latter belong (art. 1, para. 2 (b)). In addition, a child of unknown parentage, found on Italian territory, is considered to be an Italian national if it cannot be proved that he possesses another nationality (art. 1, para. 2).

44. A child is ensured acquisition of nationality following his recognition or a legal statement of his filiation (art. 2); this also applies to a foreign child adopted by an Italian national (art. 3); a foreigner or stateless person whose father or mother or one of whose direct second-degree ascendants is an Italian national by birth (art. 4); the spouse - foreigner or stateless person - of an Italian national who has legally resided for at least six months in Italian territory or three years after the date of the marriage, provided that there has been no dissolution, annulment, cessation of civil effects or legal separation (art. 5); under-age children of any person who acquires Italian nationality for the first time or re-acquires it (art. 14).

Article 8

Respect for the child's identity

45. Italian law recognizes and guarantees the rights set out in article 8 of the Convention on the Rights of the Child. First and foremost, reference should be made to the provisions contained in the Constitution, which, with regard to family relations, recognizes the rights of the family "as a natural association based on marriage" (art. 29) and guarantees children born out of wedlock all legal and social protection compatible with the rights of the members of the legitimate family (art. 30, para. 3).

A. Legitimate filiation

46. A legitimate child is a member of the family and therefore has a relationship in legal terms with the family and its relatives by marriage. The husband is presumed to be the father of a child conceived during the marriage (art. 231 of the Civil Code). Conception during marriage is presumed to have taken place in the period from the 180th day following the celebration of the marriage to 300 days after the husband's death (art. 232 of the Civil Code). The fact that the birth takes place before the 180th day does not prevent the child from being legitimate except in the case of the denial of

paternity (art. 233 of the Civil Code). Each of the two spouses may prove that the child born after the 300 days referred to in the article on presumption of conception was conceived during marriage (art. 234 of the Civil Code).

47. An action to deny the paternity of a child conceived during the marriage is authorized only in the cases established by law (art. 235 of the Civil Code). Such an action may also be brought by the mother or by the child himself if he has reached the age of majority, or by a child over 16 years of age through a special curator appointed by the court (art. 244 of the Civil Code).

48. Legitimate filiation is proved by the birth certificate recorded in the civil registry. In the absence of a birth certificate, the child's legitimacy may be proved by continuous apparent status established by various facts (name, treatment, reputation) which reveal the filiation and relationship (art. 236 of the Civil Code). Any person who does not have the status of a legitimate child and wishes to acquire it may bring a legitimacy suit. The child may bring such a suit against his parents or their heirs. Should the child die, the suit is transmitted to his descendants. The suit is not subject to limitation for the child (art. 249 of the Civil Code).

B. Natural filiation

49. When family law was reformed in 1975, full effect was given to article 30 of the Constitution, which provides that the law must guarantee children born outside wedlock all legal and social protection compatible with the rights of the members of the legitimate family. Exact equality was thus established, from the viewpoint of patrimonial rights, between the legal status of a natural child (born out of wedlock) and that of a legitimate child.

50. A natural child may be recognized (jointly or separately) by the father or the mother, provided that they are at least 16 years old, even if they were married to another person at the time of conception (art. 250 of the Civil Code). A predeceased child may also be recognized in favour of the legitimate descendants and recognized natural children (art. 255 of the Civil Code). Recognition is also possible prior to birth, but following conception (art. 254 of the Civil Code). The recognition of a natural child is entered in the birth certificate or may be recorded in a special declaration, a public document or a will (art. 254 of the Civil Code). Recognition is irrevocable, but its veracity may be contested by its author and by the child recognized (arts. 263-264 of the Civil Code).

51. Natural parenthood may be declared judicially; proof may be furnished by any means (art. 269 of the Civil Code). The legitimation of this procedure devolves on the person claiming to be the natural child, when he reaches the age of majority (art. 270 of the Civil Code). If the child is a minor, the action may be brought (with his consent if he is over 16 years of age) by the parent with parental authority or by the guardian, if so authorized by the judge (art. 273 of the Civil Code). The judgement stating the natural

filiation has the effect of recognition; the judge may also take such measures as he may deem appropriate for the support, instruction and education of the child and the defence of his patrimonial interests (art. 277 of the Civil Code).

52. The recognition of a natural child means that the father or mother undertakes to assume, on an equal footing, all the same duties and rights as for legitimate children (art. 261 of the Civil Code). The natural child takes the name of the parent who has recognized him (art. 262 of the Civil Code). The parent who recognizes a natural child is vested with parental authority in respect of him (art. 317 of the Civil Code).

53. An adulterine child may also be recognized; however, the recognition of incestuous children is prohibited unless the parents were unaware of their relationship to each other at the time of conception (art. 251). The parents must in any case provide for the support, instruction and education of an incestuous child.

Article 9

Separation from parents

54. The service for the assistance and protection of children and young people dates back to 1926 (Regulation No. 718 of 15 April 1926). It applies particularly to children under 14 placed away from the home of the parents or guardians in foster homes or in public or private charitable institutions.

A. Rights of children in the event of the separation of their parents

55. The judge who orders the separation awards the custody of minor children to one of the parents and takes any measure concerning the children exclusively on the basis of their moral and material interests (art. 155 of the Civil Code). Generally speaking, the mother is given custody of the children and also keeps the family home. In the event of disagreement between the spouses, the president of the court awards the custody of minor children to the parent he considers to be better suited to ensure their education and development. This judgement is a complex one: it takes account of the age of the children, the social environment within which they will be required to live, the time the parents can devote to them and the economic possibilities and personalities of the parents.

56. On a personal level, the spouse who does not have custody has the right/duty to visit the child and periodically lodge him under his or her roof. If there is serious justification for doing so, the judge may order minor children to be entrusted to a third person selected from among the members of the family or, if necessary, to be placed in an institution. So that the child will not be traumatized, the matrimonial home reverts as a matter of preference to the parent who is given custody of the child (art. 155 of the Civil Code).

57. Except as otherwise decided by the judge, the spouse having custody of the children exercises exclusive parental authority, but must abide by the conditions laid down by the judge. Unless otherwise provided by the court, decisions of major importance for the children are taken by both parents. The spouse who does not have custody has the right and the duty to oversee the children's education and instruction and may appeal to the judge if he considers that the decisions taken are contrary to their interests.

58. With regard to patrimonial rights, the judge determines to what extent and in what way the spouse who does not have custody of the child is to contribute to his support by establishing a maintenance payment to be paid directly to the other spouse until the child reaches the age of majority and subsequently to the child, provided that he no longer lives with his mother. The judge also decides how the child's property is to be administered.

59. In providing for the custody of a minor child and the contribution to the cost of his upkeep, the judge takes account of any requests made and of possible agreement between the parties, but may also decide differently, in the child's interests, by collecting evidence, even on his own initiative. The spouses are entitled at any time to request the review of the provisions relating to the custody of the children and the award of the exercise of parental authority over them and of the provisions relating to the person paying and the conditions of payment of maintenance.

B. Rights of minors in the event of the parents' divorce

60. Relations between divorced parents and their children are governed by article 6 of Act No. 898 of 1 December 1970 ("Rules applicable in the event of the dissolution of the marriage"), which states that parents are required to fulfil the obligations of support, instruction and education established in articles 147 and 148 of the Civil Code, even if one or both parents remarry.

61. When the court pronounces the divorce, it gives the custody of minor children to one of the two parents and takes any measure relating to the children exclusively in their moral and material interests. If the court deems it in keeping with the child's interests and also taking account of his age, it may decide to give alternate custody of the children to both parents. If it is temporarily impossible to award custody of the child to one of the two parents, the court may provide a foster family (Act No. 184, art. 2 of 4 May 1983).

62. The parent who obtains custody of minor children has exclusive parental authority over them, except as otherwise provided by the court. Depending on the behaviour of the parent, the court may decide to transfer custody of the children (Act No. 898/70, art. 9). Except as otherwise provided, decisions of major importance for the child are taken by both parents. The parent who does not have custody of the children has the right and the duty to oversee their instruction and education and may appeal to the court if he considers that the decisions taken are contrary to their interests. Each of the parents is required to communicate any changes of residence and domicile to the other.

63. With regard to patrimonial rights, the court determines to what extent and in what way the spouse who does not have custody of the child is to contribute to his support, instruction and education and how his rights in respect of his children are to be exercised. The family domicile tends to revert to the parent who has custody of the children or the parent with whom the children live once they have reached the age of majority.

C. Separation from the parents in the event of ill-treatment

64. If the child is subjected to ill-treatment by his parents, the judge may impose a prison sentence on them (art. 570 of the Penal Code), as a result of which they are deprived of parental authority (art. 34 of the Penal Code) and the child is placed with a member of the family or, in the absence of such a person, a guardian or curator (reference may be made to the commentary on art. 5 of the Convention for other cases of deprivation or suspension of the exercise of parental authority, see paras. 28 and 29).

65. A child temporarily deprived of an appropriate family environment may either be given into the care of another family, preferably with young children, or of a single person, or of a family-type community, in order to guarantee his support, instruction and education. Should this be impossible, the child may be placed in a public or private assistance institution, preferably in the region in which he lives (Act No. 184, art. 2 of 4 May 1983).

Article 10

Family reunification

66. The complex set of laws on entry, stay and work by foreigners in Italy contains no separate regulations for children. A distinction should be made between the legal status of a foreign child who is a national of the Community country and a child from a non-Community country. Children from one of the member countries of the European Union have freedom of movement while obeying the laws of their respective nations.

67. Generally speaking, with the exception of children who are nationals of Community countries, an immigrant child, except for one entering Italy for the purposes of adoption, has no specific identity in the Italian system. The rules which govern his status are found mainly in the provisions on the families of foreigners (particularly immigrant workers), those concerning education and, where relevant, those concerning work.

68. The constitutional provisions on family supervision (art. 29 of the Constitution), on the obligations of parents in respect of the support, instruction and education of children (art. 30 of the Constitution), on the protection of children and adolescents (art. 31 of the Constitution) and on school enrolment (art. 34 of the Constitution) apply equally to Italian and foreign children.

69. Act No. 943 of 30 December 1986 containing regulations on the placement and treatment of non-Community immigrant workers recognizes that such workers legally residing and working in Italy are entitled to family reunification (art. 4).

70. The protection provided by international agencies is important, particularly with a view to preventing any measure of separation or illegal expulsion. The right of the individual to care for his family is fundamental in Italy. Italy has also signed numerous International Labour Organization (ILO) conventions concerning family reunification (e.g., ILO Convention No. 143, art. 8).

71. Before adopting any expulsion measures, law enforcement officials should assess the impact on the foreigner's family unit and on his obligations and his rights in respect of support, instruction and education.

72. It should be pointed out that Italian law makes no provision for rules restricting the freedom of children to maintain personal relations and direct contact with their parents when they reside in different States, in compliance with the regulations concerning care of children.

73. With regard to separation from the parents and, in particular, the problem of family reunification for a child entrusted to a parent who has moved illegally from, or to, another State, reference may be made to Act No. 64 of 15 January 1994 ratifying the Hague and Luxembourg Conventions of 25 October 1980 and 20 May 1980.

Article 11

Illicit transfer and non-return

74. With Act No. 64 of 15 January 1994, the Italian Government ratified the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children, opened for signature in Luxembourg on 20 May 1980, and the Hague Convention on Civil Aspects of International Child Abduction of 25 October 1980. Act No. 64/94 contains regulations for the implementation of these Conventions, as well as of the European Convention on the Repatriation of Minors of 28 May 1970. It also contains the necessary provisions for the implementation of the Conventions, particularly with regard to the identification of the central authority (Ministry of Justice, Central Office for Juvenile Justice) responsible for cooperation activities and for procedures for implementing the Conventions and for establishing criteria for the selection of the competent juvenile court.

Article 12

Right of the child to be heard in any judicial and administrative proceedings

A. Right of the child to institute proceedings to defend his interests

75. In Italian legislation, there is a set of provisions that give children the possibility of taking direct initiatives or instituting legal proceedings whenever their rights or interests are at stake. For example:

(a) Article 321 of the Civil Code recognizes the right of a minor to apply directly to the courts for the performance of acts in his interest which go beyond the ordinary administration of his own property and which the person exercising parental authority does not wish to, or cannot, perform;

(b) Article 120 of the Penal Code recognizes the child's right to file a complaint when a criminal offence is committed against him.

B. Hearing of children through a representative or an appropriate body

76. The parents exercising parental authority represent their minor children in all legal and judicial acts in civil matters. They jointly represent born and unborn (minor) children in all civil acts and administer their property (art. 320 of the Civil Code). If a conflict of interest arises between the parents and the minor, the judge may, at the request of the child, the public prosecutor or the parents, appoint a special curator and authorize him to perform acts on behalf of the minor (art. 321 of the Civil Code).

77. If both parents are deceased or for other reasons cannot exercise their parental authority, the guardianship judge appoints a guardian or a deputy guardian who is chosen from among the persons designated by the parents or from among the minor's ascendants and family members, who represents the child in his exclusive interests, in civil and administrative acts and who reports to the guardianship judge on any action taken (art. 343 et seq. of the Civil Code).

78. In criminal matters, where an offence is committed against a minor under the age of 14 years, the parent, guardian or special curator exercises the right of complaint; minors over the age of 14 years may exercise the right of complaint themselves (arts. 120 and 121 of the Penal Code). In any event, if the parent, guardian or curator waives the right to institute criminal proceedings, a minor who has reached the age of 14 years maintains the right of complaint (art. 125 of the Penal Code). In criminal proceedings, a minor against whom an offence has been committed may make a statement and submit evidence through his father or mother, guardian or curator (art. 90 of the Code of Criminal Procedure).

C. Direct hearing of children

79. By way of example, attention is drawn to the following legal provisions on the direct hearing of minors in proceedings concerning them:

(a) In separation and divorce proceedings, when providing for the custody of children and the contribution to their maintenance, the judge may, even on his own initiative, order the minor children to be heard, even in the absence of their parents, if he deems it advisable or necessary (art. 155 of the Civil Code and art. 6, para. 9, of Act No. 898, of 1 December 1970);

(b) In proceedings relating to foster placement, a minor 12 years of age, or younger, as appropriate, must be heard by the judge (art. 4, Act No. 184 of 4 May 1983);

(c) In adoption proceedings, a minor 12 years of age must be heard personally and a minor 14 years of age must consent to his own adoption (art. 7, Act No. 184 of 4 May 1983);

(d) In proceedings relating to the recognition of a natural child, the judge must hear the minor in order to determine whether the recognition is in his interest (art. 250 of the Civil Code);

(e) In the event of disagreement between the parents on matters of particular importance relating to minor children and if the parents request the intervention of the judge, the latter may order the hearing of the parents and children 14 years of age and over (art. 316 of the Civil Code);

(f) A ward 10 years of age must be heard by the guardianship judge on matters relating to the place where he is to be reared and on the continuation of his studies or the exercise of an art, a trade or an occupation (art. 371 of the Civil Code);

(g) A pregnant minor who intends to have an abortion must be heard by the competent authorities (arts. 4 and 22, Act No. 194 of 22 May 1978);

(h) In criminal proceedings against minors accused of an offence, they must be heard by the juvenile court, with due account being taken of their situation and with the emotional and psychological assistance provided by the presence of the parents or any other appropriate person indicated by the minors, as well as with the assistance of the court administration's minors' department (Presidential Decree No. 448 of 22 September 1988. For further details, reference may be made to arts. 37 and 40 of the Convention);

(i) A child under 14 years of age cannot testify in criminal proceedings (art. 120 of the Code of Criminal Procedure). Furthermore, the hearing of a minor witness, which may be ordered by the court if it does not harm the minor's peace of mind, is conducted by the presiding judge, who may seek the assistance of a member of the minor's family or an expert in child psychology (art. 498 of the Code of Criminal Procedure) and may order the hearing to be held in private (art. 472 of the Code of Criminal Procedure).

Article 13

Freedom of expression

80. The Italian Constitution recognizes and guarantees the right of all individuals freely to express their thoughts either orally, in writing or by any other means of communication (art. 21 of the Constitution).

Article 14

Freedom of thought, conscience and religion

A. Freedom of religion

81. The Italian Government's efforts to apply the principle of religious freedom proclaimed in the Constitution (arts. 3, 7, 8, 18, 19 and 20) have been intensified in recent years in several areas. The following acts were adopted for this purpose and are intended to be a specific application of the principles embodied in the Constitution in respect of religious freedom:

(a) Act No. 517 of 22 November 1988, ratifying the agreement between the Italian State and the "Assembly of God in Italy" religious denomination;

(b) Act No. 516 of 22 November 1988, ratifying the agreement between the Italian State and the Seventh-Day Adventists;

(c) Act No. 101 of 8 March 1989, ratifying the agreement between the Italian State and the Union of Italian Jewish communities.

82. With regard to specific questions on freedom of religion, it may also be noted that:

(a) Article 18 of Act No. 516 of 1988, endorsing the agreement with The Union of Adventist Churches, and article 4 of Act No. 101 of 1989, ratifying the agreement with the Jewish communities, provide for civil recognition of Saturday celebrations. According to these provisions, Adventists and Jews are entitled, on request, to have Saturdays as their weekly rest day;

(b) Article 5 of Act No. 101 of 1989 extends the rule applicable to Saturdays to include the main Jewish holidays, by adding seven holidays to the calendar set by decree of the Ministry of the Interior, as indicated by the Union of Jewish Communities.

B. Religious instruction in public schools

83. With the entry into force of the 18 February 1984 agreement between Italy and the Holy See, the previous system, under which the teaching of the Catholic religion in public schools was compulsory, with the possibility of exemptions for non-Catholics and non-believers, has been replaced by new measures which are more in keeping with the constitutional principles of the secular nature of the State.

84. The new system provides for the possibility that parents and secondary school students may or may not choose religious instruction. However, this possibility, which is being allowed in a school system as rigid as the Italian one, has given rise to heated debate that has also involved the Constitutional Court. The discrimination deriving from the choice is manifested specifically in the criteria used in the composition of classes, the length of the school day and the integration of religion in class schedules.

85. In its judgements No. 203 of 12 April 1989 and No. 13 of 11 June 1991, the Constitutional Court stated that students who choose not to have Catholic religious instruction are not required to participate in other school activities. Nevertheless, the Constitutional Court decision does not solve the problem of organizing either religious instruction schedules or the "replacement" subjects, i.e. the arrangements the school should make for students who choose not to have religious instruction.

86. An important passage in the guidelines for kindergartens calls, in addition to specific teaching, for "the adoption of a correct attitude towards religiousness and religion and the choices of non-believers, which is essential primarily in forging relationships based on reciprocity, fraternity, constructive involvement, a spirit of peace and a feeling of the unity of all mankind at a time of increasing pressures in a world of multicultural and multidenominational interaction". Hence the importance of action designed to prevent distortions (such as discriminatory behaviour) resulting from the lack of a balanced education.

Article 16

Protection against arbitrary or unlawful interference

A. Personal freedom, inviolability of the home, freedom and secrecy of correspondence, honour and reputation

87. The Italian legal system protects and guarantees the rights embodied in article 16 of the Convention for all individuals, including children. The principles contained in the Constitution and the provisions of criminal law referred to below are of particular importance in this regard:

(a) Article 13 of the Constitution states that "personal freedom is inviolable". No form of detention, inspection or search is permitted and neither is any other restriction on personal freedom, except by substantiated court order and then only in such cases as provided for by law;

(b) Article 14 of the Constitution recognizes the inviolability of the home. It states that the home may be subjected to inspection, search and distraint only in cases and in the manner provided for by law in conformity with the guarantees prescribed for safeguarding personal freedom. Forcible entry is an offence and is punishable in accordance with article 614 ("Forcible entry") and article 615 ("Forcible entry by a public official") of the Penal Code. According to article 615 bis of the Penal Code (which governs the offence of "invasion of privacy"), anyone who uses film or sound-recording equipment unlawfully to obtain information or pictures of private life in the dwelling of another person or in any other private residence is liable to a

penalty of six months to four years' imprisonment. The same penalty is applicable, but this is a more serious offence, to any person who records and discloses the information or pictures obtained in the manner described above;

(c) Article 15 of the Constitution embodies the principle of the inviolability of freedom and secrecy of correspondence and any other form of communication. It may be restricted only by substantiated court order, with the guarantees laid down by law. The offence of breach, theft and concealment or destruction of correspondence is punishable by article 616 of the Penal Code. The following are also considered offences: (i) knowledge or interception of or tampering with telegraph or telephone communications or conversations (art. 617 of the Penal Code); (ii) installing devices to intercept or tamper with telegraph and telephone communications or conversations (art. 617 bis of the Penal Code); (iii) falsifying, altering or suppressing the contents of telegraph or telephone communications or conversations (art. 617 ter of the Penal Code); and (iv) disclosing the contents of the correspondence of others (art. 618 of the Penal Code);

(d) With regard to the protection of the honour and the reputation of children, attention is drawn to articles 594 and 595 of the Penal Code, which punish anyone who damages the honour and dignity of another person ("insult") and his reputation ("defamation").

B. Framework law

88. The inviolability of the privacy of minors and respect for their reputation are part of the general principles contained in the framework law (see para. 4). The draft law states that minors are entitled to enjoy the rights and freedoms that the Constitution guarantees to every national, without any discrimination or limitation based on the racial, social, religious or moral characteristics of minors and their parents. The Italian legal system ensures that minors are given special protection guaranteeing them specific and steadfast consideration within the family, territorial and social community (art. 2).

89. The draft law also states that it is the duty of the media to respect the privacy of minors more fully and strictly than that of adults, in view of the particular vulnerability of their personality and the supra-individual importance of their protection. No information on minors should damage either their honour or their reputation (art. 13).

Article 17

Access to appropriate information

A. Protection of minors in radio and television regulations

90. Act No. 223 of 6 August 1990 ("Rules on public and private radio and television") is among the recent laws adopted to protect the personality of minors. It deals with:

(a) Specific limitations on advertising, which "should not harm minors morally or physically" and may not be shown during cartoon programmes, which

may be subject to a special prohibition imposed by the radio broadcasting and publishing authorities regarding the interruption of certain educational and religious programmes and work of high artistic value;

(b) Specific prohibitions on the broadcasting (i) of programmes "which may harm the psychic or moral development of minors", as well as those which contain scenes of gratuitous violence or pornographic scenes or which encourage intolerant attitudes and behaviour based on differences of race, sex, religion or nationality; and (ii) of films prohibited to minors under 18 years of age programmes which have not been approved for screening or presentation for public viewing and films prohibited to minors under 14 years of age, between 7 a.m. and 10.30 p.m.

B. Protection of children against obscene publications and performances

91. The following provisions of Italian legislation, which are designed to protect minors against obscene publications and performances, are worth noting:

(a) Article 528 of the Penal Code makes anyone who, for commercial purposes or for distribution or public display, manufactures, introduces into the territory of the State, purchases, holds, exports, or puts into circulation an obscene writing, drawing, image or other obscene object of any type, liable to three months to three years' imprisonment and a fine. This penalty also applies to anyone who gives public theatrical or cinematographic performances of an obscene nature. Act No. 47 of 8 February 1948 provides that article 528 of the Penal Code also applies to publications intended for children and adolescents when these publications have the potential to harm their sense of moral values or incite them to become involved in corruption or to commit crimes or suicide. In such cases, the penalties are increased (art. 14);

(b) Act No. 1591 of 12 December 1960 makes the above-mentioned penalty applicable to anyone who manufactures, introduces, posts or publicly displays drawings, images, photographs or representations which are intended as advertising and which constitute indecent behaviour or are an affront to public decency, in view of the particular sensibilities of minors under 18 years of age and the need to guarantee their moral protection (art. 1);

(c) Act No. 161 of 21 April 1962 and Presidential Decree No. 2029 of 11 November 1963 contain provisions prohibiting concessionaires and managers of cinemas and theatres from allowing minors under 14 or 18 years of age to view films and theatrical productions which, because of the scenes they contain, may offend the sensibilities of young persons and are intended exclusively for adult audiences.

C. The framework law

92. The framework law (see para. 4) includes some provisions to protect minors vis-à-vis the media. In the area of radio and television programming, in particular, the law establishes the obligation - during prime time when the audience may include persons in their formative years - to broadcast only

those programmes which take the sensibilities and problems of minors into account by giving them the opportunities to face reality and by avoiding any gruesome or explicitly violent representations (art. 13). The document on "Minors and television" submitted on 28 October 1991 by the Consumers' Advisory Council relates to this subject. The framework law also contains several recommendations to the publishing sector to promote the publication of works and translations which deal with the problems of children.

Article 18

Common responsibility of the parents for the upbringing and development of the child

93. Article 5 of the Convention deals with the common responsibility of the parents for the child (see paras. 17 et seq.).

A. Children of working parents

94. Under the legislation in force (Act No. 903 of 9 December 1977), the mother was entitled to maternity leave during the first three months following the birth of the child and to receive an allowance corresponding to 80 per cent of her normal pay. She was also entitled to be absent from the workplace for two hours (cumulative) each day during the first year of the child's life. A recent Constitutional Court ruling (No. 179 of 1993) stressed that the balanced development of the child's personality requires the participation of both parents, particularly with regard to emotional and relational aspects. The Constitutional Court has therefore recognized the following rights to which both parents are entitled: the right to take six months of leave, while keeping their post and receiving an allowance equal to 30 per cent of their pay, during the first year of the child's life; the right to take time off when the child is sick, during the first three years; and the right to daily rest to care for the child during his first year of life.

B. Day nurseries

95. Act No. 1044 of 6 December 1971 recalls that day nurseries for children under 3 years of age are social service facilities provided through family-oriented policies. Day nurseries are intended to provide temporary child care in order to ensure adequate support for the family and to facilitate the access of women to the working world in the context of a comprehensive social security system. A long-term plan has been established for the creation and management of several day nurseries.

C. Framework law

96. The framework law (see para. 4) regards the family as the primary and basic environment for the education of the child and defines the child's position in relation to the acknowledged autonomy of the family unit and monitoring by the State in cases of problems or failure in the education of the child. For both parents, the law establishes the duty to support, instruct, guide and provide continued protection for the minor; the duty to

see to it that the persons and institutions involved in the upbringing of the child act for the same purpose; and the right to obtain the necessary support and assistance from the authorities in order to fulfil their obligations (art. 3).

Article 19

Protective measures

A. Involvement of minors in criminal acts

97. The policy of the Italian Government is based primarily on the prevention of unrest and anti-social behaviour. In the context of the legal provisions adopted in this regard and with a view to combating the phenomenon of juvenile delinquency, mention may be made of Act No. 216 of 19 July 1991, which prescribes "initial measures on behalf of minors liable to be involved in criminal activities". The use of minors, who may not be charged, in criminal acts is a problem that is becoming more serious, particularly in southern Italy. Although the number of minors remains stable, they are involved in increasingly serious offences.

98. Act No. 216/91 is aimed at protecting and encouraging the growth, individual development and socialization of minors living in conditions of social unrest by encouraging the activities of reception communities and promoting supportive activities for their families of origin, as well as initiatives by children's homes and social welfare centres so that minors can be rehabilitated. This Act provides in particular for the establishment of a "fund for the development of social investment" with an annual budget of 50 billion lire. The fund's purpose is to allocate contributions to support integrated projects to provide facilities throughout the country with the goal of protecting the growth, individual development and socialization of minors through:

(a) The reception of children who have had to be temporarily separated from their family environment;

(b) Action to assist families, inter alia, following the reintegration of the child once the situation of risk has been dealt with, particularly where compliance with his educational obligations is concerned;

(c) Creation of social contact centres and the promotion of social initiatives in districts at risk;

(d) Initiation of action, with the agreement of the competent school authorities and on the basis of guidelines supplied by the Ministry of Public Education, in the context of school structures, but at times when teaching activities are not taking place or during the summer holidays (art. 1, para. 1 of Act No. 216/91).

99. The spread of the contributions is based on the criteria and conditions established by an interministerial committee which is chaired by the Minister of Social Affairs and examines the badly deteriorated environments in which situations of tension, social unrest and severe delinquency occur,

particularly in the southern parts of the country. Act No. 216/91 contains reservations of a territorial nature by stating the firm determination of the Minister of Justice to finance projects formulated by southern communes for activities to prevent delinquency and rehabilitate minors.

B. Protection of abandoned minors

100. The Penal Code (art. 591) makes anyone who abandons a minor under 14 years of age or a person unable to provide for his own needs, in his charge or care, liable to six months to five years' imprisonment. Anyone who abandons in a foreign country an Italian national under 18 years of age entrusted to him on Italian territory for the purpose of employment is liable to the same penalty. The penalties are increased if the person committing the offence is the parent or adoptive parent.

101. Attention is also drawn to article 19 of Regulation No. 2316 of 24 December 1934 (still in force) containing the single text of the acts on protection and assistance to mothers and children, which provides that any citizen finding a minor under 14 years of age abandoned in a public place or knowing of the material or moral abandonment of a child is required to notify the assistance and protection committee in the place where the child is found. When a minor has been morally or materially abandoned and brought up in unhealthy or dangerous surroundings or by persons incapable of providing for his education owing to negligence, immorality, ignorance or any other reason, provision is made for requesting the authorities to intervene and, through the child protection bodies, find a safe place for the minor until it is possible to arrange for definitive guardianship (art. 403 of the Civil Code).

C. Framework law

102. The framework law (see para. 4) states that legal or administrative measures for the monitoring of and changes in relations between parents and children are lawful when, in the fulfilment of their duties and the exercise of their rights, the parents violate the minor's rights or when the relationship established is harmful to the minor.

103. In the context of the right to health, taken as the promotion of the child's physical, mental and emotional well-being, the draft law provides that activities relating to the protection of the minor should be associated with social welfare initiatives for the family and mentally or socially disturbed children, with particular emphasis on prevention. The framework law establishes that the territorial bodies are required to set up, inter alia, medical and educational psychology assistance services, with child neuro-psychiatrists, psychologists and social welfare workers capable of assessing and treating psychological problems in children and their families, in all their clinical and social forms.

104. The framework law also provides that any child found in a state of moral or material abandonment, even temporarily, must be reported to the social services, which are required to do whatever is needed on an emergency basis and so inform the competent legal authority, which will take the necessary measures.

Article 20

Alternative care

105. Italian legislation is a perfect example of the protection for which article 20 of the Convention provides. In this connection, mention should be made of Act No. 183 of 4 May 1983 ("Rules for the adoption and placement of minors"), which recalls the constitutional principle that "a minor has the right to be brought up within his own family" (art. 1) and contains provisions on foster placement, placement in public and private assistance establishments and the adoption of minors. In particular, the Act provides that:

(a) A child temporarily deprived of an appropriate family environment may be entrusted to another family, preferably one which has young children, or to a single person or to a family-type community, with a view to ensuring his support, education and instruction (art. 2, para. 1). Foster placement is ordered by the local services, with the consent of the parents or of the father or the mother exercising parental authority or of the guardian, after hearing the child if he has reached his twelfth birthday, or at an even younger age, if necessary, if the parents exercising parental authority or the guardian do not give their consent, it is the Juvenile Court which decides (art. 4). In other cases, the decision is taken by the guardianship judge;

(b) If it is impossible to place a child in a suitable family, he is entrusted to a public or private assistance institution, preferably in the region where he resides (art. 2, para. 2). In this case, the establishment exercises guardianship over the child placed in it or assisted by it, in accordance with the rules of the Civil Code (art. 343 et seq.), until a guardian is appointed.

106. The same Act contains detailed regulations on the adoption of minors (see comments on art. 21 of the Convention in paras. 107 et seq.).

Article 21

Adoption

A. Regulations on adoption

107. Act No. 431 of 5 June 1967 already recognized that the system of adoption was based solely on the child's interest in growing up within a family with which he has emotional ties; it therefore does not recognize any inviolable right of the parents with regard to their children if the interests of the latter are obviously jeopardized vis-à-vis a more satisfactory placement. The institution of adoption is thus based exclusively on the interest of children who have been abandoned in having a family which will allow the harmonious development of their personalities.

108. In the context of policies for the protection of children and young adolescents, Act No. 184 of 4 May 1983 is of particular importance because it provides for an organized legal set-up with regard to adoption and foster

placement and makes substantial changes in the earlier 1967 regulations on full or special adoption (Act No. 431 of 5 June 1967), which ensured the protection of children under 8 years of age and defended their interests.

109. Under the new Act No. 184/83, the provisions of what was formerly termed "special" adoption are extended to all minors; the provisions of the Civil Code, which favour the interests of the adoptive parent and are today applied solely to the cases of children who are of age, with the guarantees provided by the Act for the reform of family law (Act No. 151 of 19 May 1977) and by Act No. 184/83, therefore do not apply to children under age.

110. Starting from the principle that "a child has the right to be brought up within his own family" (art. 1), the Act provides that the juvenile court declares, even on its own initiative, that abandoned minors deprived of the moral and material assistance of their parents or of the members of their family required to provide for them, on condition that the failure to assist is not the result of temporary force majeure, are suitable for adoption. The situation of abandonment remains applicable when children are placed in social welfare establishments or foster homes (art. 8).

111. Spouses who have been married for more than three years, who have not instituted judicial or de facto separation proceedings and who are capable of instructing, educating and supporting the children they intend to adopt may adopt a child. The adoptive parents must be at least 18 years old and not more than 40 years older than the child adopted (art. 6).

112. Anyone may notify the public authorities of situations of abandonment of minor children; any ministerial official, any person in charge of a public service or any person in public office must inform the juvenile court as rapidly as possible of the situation of an abandoned minor on learning of it by virtue of his position (art. 9).

113. The juvenile court verifies the state of abandonment and is empowered, until the decision on pre-adoption placement has been taken, to take any temporary steps in the child's interests (art. 10). Subsequently, the juvenile court declares the child's suitability for adoption, appointing, if necessary, a temporary guardian and taking appropriate measures in the child's interest (art. 15).

114. Spouses wishing to adopt a child must submit an application to the juvenile court, which will make the customary verifications and may order pre-adoption care and establish the conditions for it. If the minor is over 14 years of age, he must expressly consent to the placement (art. 22). After a year's placement and after hearing the spouses and the child, the court decrees the adoption in the form of a substantiated order. In this case, too, a child who has reached his fourteenth birthday must expressly consent to the adoption in respect of the couple selected (art. 25).

115. Attention is drawn to the serious problems involved in enforcing the law fully and properly, since approximately 30,000 children, mostly in southern Italy, are now in institutions. In order to solve this problem

satisfactorily, it should be recalled that the law provides for the "social" management of foster placement and adoption and constant monitoring by the competent bodies.

116. The procedures for adoption or foster placement will be more efficient and relevant from the point of view of the protection of the rights of the individual (whether the father, the mother or the child) only in the context of mutual and responsible implementation by the courts and the competent social services.

B. International adoption

117. Act No. 184/83 also governs cases of international adoption. Spouses wishing to adopt a foreign child must apply to be certified as suitable by the competent juvenile court (art. 30). Admission to the country of foreigners under 14 years of age for the purposes of adoption is permitted when a foreign authority has issued an adoption or pre-adoption foster care order for the child or any other equivalent order (art. 31). The juvenile court is required to verify that the measure adopted by the foreign authority meets the requirements for the protection of the child (art. 32).

118. Italian law on adoption, foster placement and the necessary emergency provisions are applied to foreign children who have been abandoned in Italy (art. 37). Act No. 184/83 also provides for special conditions for the emigration of Italian children for the purposes of adoption (arts. 40-43).

Article 23

Disabled children

A. Legislation for the protection of disabled persons

119. In recent decades, a number of acts have been adopted for the protection of persons suffering from motor disabilities. These include:

Act No. 66/62 on financial assistance for blind persons;

Act No. 432/68 on compulsory foster placement;

Act No. 381/70 on financial assistance for deaf mutes;

Act No. 118/71 on disabled civilians: financial, health, and prosthetic assistance and assistance for school attendance;

Act No. 517/77 on forms of integration for disabled persons;

Presidential Decree No. 384/78 on the elimination of architectural obstacles;

Act No. 180/78 on psychiatric reform;

Act No. 833/78 on health reform;

Act No. 18/80 on compensation for personal care;

Act No. 41/86 on the elimination of obstacles in public buildings;

Act No. 13/89 on the elimination of obstacles in private buildings;

Act No. 15/91 on the right to vote.

120. Various regulations on behalf of disabled persons are also in force regionally and all regions now have laws to protect disabled persons.

B. Protection of disabled children

121. The legislative measures adopted on behalf of disabled children include framework law No. 104 of 5 February 1992 containing provisions for "assistance to and the integration and rights of disabled persons". The framework law is intended to guarantee full respect for human dignity and the rights to freedom and independence of disabled persons and to promote their full integration within the family, school, work and society (art. 1 (a)). It also deals with the functional and social rehabilitation of persons with physical, mental and sensorial disabilities by guaranteeing services for the prevention, treatment and rehabilitation of disabilities, as well as for the legal and financial protection of disabled persons (art. 1 (b)).

122. The civil rights of persons with motor disabilities include: the right to assistance, the right to attend school, the right to integration in professional life and vocational training, the right to mobility and the right to free time and to access to information and communication (art. 7).

123. Act No. 104/92 states the principles and purposes of the new regulations and defines a disabled person as "anyone with a stabilized or progressive physical, mental or sensorial disability giving rise to learning, relational or occupational problems and a situation of social disadvantage or marginalization" (art. 3). This Act also applies to foreigners and stateless persons residing, domiciled or living permanently in Italian territory (art. 3, para. 4).

124. The basic principles embodied in Act No. 104/92 are referred to below in connection with the Convention on the Rights of the Child.

1. Health assistance for disabled children

125. Framework law No. 104/92 puts the social welfare departments in charge of permanent prevention tasks for children from birth. It also provides for the establishment of a personal health card in which can be entered the results of visits to the doctor and any other health information for the determination of the child's state of health. Action on behalf of persons with a serious disability is regarded as a matter of priority. The sectors of action concerned are: prevention, treatment, rehabilitation and assistance for disabled persons.

126. Article 6 relates to prevention and stresses the importance of health education and information on the causes of the disability, prenatal and early diagnosis, post-natal prevention and prevention during childhood and risk factors in the domestic and professional environment. It also provides for vaccination against German measles.

2. Treatment and rehabilitation of disabled children

127. Act No. 104/92 ensures primary and secondary prevention throughout all phases of a child's development so as to prevent or identify in time the onset of the disability and to limit or overcome the damage it causes. Treatment and rehabilitation are ensured by means of integrated health and social services programmes. The National Health Service ensures treatment and early rehabilitation through its own or officially agreed structures.

128. Act No. 104/92 also provides for the establishment of genetic advisory and prenatal and early diagnosis services and the permanent monitoring of children's health from birth. It also guarantees social integration, personal assistance and action in the most serious cases through the establishment of social rehabilitation centres. These initiatives are intended to protect the individual's health and well-being, even when he is in a situation of disability and physical weakness.

3. School attendance by disabled children

129. Act No. 104/92 protects the right to education and instruction by encouraging the appropriate integration of disabled children in educational establishments. Disabled children are guaranteed entry to a creche from ages 0 to 3. The Act also recognizes the disabled child's right to instruction in nursery school and in coeducational classes in schools of all kinds and at all levels.

130. Educational psychologists in local health units, together with teachers, with the cooperation of parents, draw up an individualized curriculum for each disabled child, stating the physical, mental, social and affective characteristics of the pupil and stressing learning problems resulting from the disability and possibilities for rehabilitation, as well as the child's abilities which must be supported, brought out and strengthened.

131. For disabled children who must complete their compulsory education and are temporarily unable to do so for health reasons or who are in hospital, school units are set up outside the ordinary classroom to which non-disabled children in hospital are also admitted.

132. Mention should also be made of judgement No. 215 (1987) handed down by the Constitutional Court on the principle of "non-subordination" of the disabled child's right to instruction.

4. Financial assistance for disabled children

133. The framework law No. 104/92 recognizes that health and assistance costs required in cases of disability and serious and permanent infirmity may be deducted from the total income of the taxpayer by whom they are borne. In

addition, working mothers or fathers - even if they are the adoptive parents - of a child with a severe disability are entitled to optional leave (which is normally one year) for up to three years or may take up to two hours of leave per day, with full pay, until the child's third birthday. Subsequently, they are allowed three days' leave per month.

134. With regard to financial assistance for disabled children, mention may also be made of Act No. 289 of 11 October 1990, which provides for the payment of a monthly allowance on behalf of minor disabled civilians who are required regularly to attend specialized therapeutic treatment and rehabilitation centres for disabled persons. Financial assistance is also granted to disabled and handicapped children who attend educational establishments and vocational training centres for their reintegration into society. In 1993, 7,000 allowances of this type were awarded. This type of benefit had earlier been abolished following the repeal of article 17 of Act No. 118 of 30 March 1971, as provided for by article 6 of Act No. 508 of 21 November 1988.

135. Attention is also drawn to the agreements signed on 23 September 1986 by the Italian Government and UNICEF and ratified by Act No. 312 of 19 July 1988, relating to the establishment and financing of a children's assistance centre in Florence. The financing granted for the three-year period from 1988 to 1990 (equivalent to 3.550 billion lire annually) was extended for the period 1991-1993 and confirmed for the following three-year periods.

Article 24

Health and health services

136. The right to assistance for the family, maternity and the child is embodied in the Constitution of the Republic, article 31 of which states: "The Republic shall protect maternity, children and young people by providing the institutions necessary for that purpose". Before 1975, this right was provided for by various public bodies and agencies, whose assistance did not constitute a comprehensive, coordinated response. One of these bodies was the Opera Nazionale Maternità e Infanzia (ONMI), which was one of the main institutions for the provision of economic, social and medical assistance and which, over the years, had set up an extensive network of paediatric centres and a number of creches. It was dissolved in 1975, as part of the decentralization and amalgamation of local assistance through the establishment of family planning centres.

137. Since 1971, Italian legislation has increased the importance and improved the status of women within the family and society, thus marking a turning point in the organization of mother-and-child welfare services, through the Act on the protection of working mothers (Act No. 1204 of 1971) and the acts on creches (No. 1044 of 1971 and No. 891 of 1977).

138. In addition, the acts on the reform of family law (No. 105 of 1975), on equal treatment of men and women with regard to employment (No. 903 of 1977) and on regulations regarding the dissolution of marriage (Act No. 436 of 1978) were of considerable social significance.

139. Under Act No. 405 of 1975, social and health services specifically for mother and child welfare were introduced, together with family advice centres. Act No. 194 of 1987 establishing "social welfare measures for maternity and voluntary termination of pregnancy" (see the comments on art. 6 of the Convention, (paras. 30 to 37)) stipulates the activities of these family planning centres with regard to the social and health aspects of maternity and establishes the procedures to be followed in cases of voluntary termination of pregnancy in the interest of the health of the woman concerned.

A. Family planning centres

140. With a view to guaranteeing the provision of family and maternity assistance, family advice centres were set up in all regions of the country under Act No. 405 of 29 July 1975. The family assistance service provided by these centres comprises (art. 1):

(a) Psychological and social assistance in preparing for responsible motherhood and fatherhood and in dealing with marital and family problems, including problems involving children;

(b) Providing the resources necessary to achieve the goals freely chosen by married couples and single parents with regard to responsible procreation in accordance with ethical convictions and physical integrity;

(c) Protection of the physical health of mother and child;

(d) Dissemination of information for the promotion or prevention of pregnancy, providing advice on appropriate methods and remedies.

141. The extension of the network of family advice centres throughout the country, together with other measures, including the numerous information and health education campaigns launched by the Ministry of Health ("Azione Donna", "Benessere Donna"), has resulted in a marked reduction in the number of voluntary terminations of pregnancy in recent years. According to Ministry of Health estimates, such terminations fell from 234,801 in 1982 (the highest figure) to 160,532 in 1991.

B. National Health Service

142. Act No. 833 of 1978 is of special importance in that it establishes the National Health Service and makes the protection of mother-and-child welfare a top priority. This task is carried out by local health units which are responsible, within their area of competence, for mother-and-child welfare, providing paediatric care and safeguarding the right to informed and responsible procreation.

143. The Act establishes the principle of basic paediatric care for children up to 14 years of age. The person exercising parental authority over the child, or an authorized member of the family, chooses a paediatrician from a list of those in the child's area of residence. The chosen paediatrician

provides general therapeutic and preventive care, as well as health education, to the child. Paediatric hospitals or mother-and-child care departments in general hospitals provide paediatric care (up to 14 years of age) for acute or chronic ailments or accident cases.

144. In Italy, there are 634 paediatric services in 566 public hospitals, 140 neo-natal services in 135 hospitals and 15 paediatric hospitals, in addition to 285 beds in 17 approved private health-care establishments.

145. Under the health-care programme, Act No. 833/78 provides for the introduction of a national health plan to identify priority sectors and establish the basic targets of each operational programme on a three-year basis. The projects envisaged under the national health plan for 1992 to 1994 include programme No. 4 on mother-and-child welfare, which provides for:

(a) The enactment of national legislation making vaccinations against measles, German measles, mumps and whooping cough compulsory;

(b) A national pregnancy information campaign involving the distribution of a Ministry of Health brochure;

(c) The establishment of national epidemiological registers at the Ministry of Health and the Advanced Health Institute;

(d) The identification of a network of 10 specialized paediatric polyclinics organized on departmental lines;

(e) The establishment of two paediatric nephrology and dialysis centres in geographical areas which are without them and the strengthening of at least three paediatric nephrology and dialysis centres (1 in the north, 1 in the centre and 1 in the south) to enable them to carry out kidney transplants on children;

(f) The reorganization and strengthening of the network of paediatric oncohaematology services and the designation of at least 14 referral centres;

(g) Improvement of child cardiology and heart surgery services, drawing up and dissemination of early detection procedures, together with the national redistribution of paediatric cardiology and heart surgery centres;

(h) Establishment of eight serious-burns units for children as follows: two in northern Italy, two in central Italy, two in the south and one on each island;

(i) The creation of three referral services (1 in the north, 1 in the centre and 1 in the south) for paediatric medical and surgical pathology to deal with organ transplants for children;

(l) Obligatory testing for major infectious diseases during pregnancy and at least two echographic examinations;

(m) Ongoing training of paediatric personnel;

(n) Introduction, within the network of advice centres, of general advisory services for the prevention of handicaps;

(o) Introduction of home hospitalization for children on a trial basis (total of 6,000 cases over the three-year period);

(p) Strengthening of integrated home-care services for families with handicapped children up to the age of 14: at least 1 operating service per 100,000 inhabitants.

C. Infant mortality

146. Over the last few decades, highly satisfactory results have been achieved in reducing perinatal, neo-natal, infant and maternal mortality and in the diagnosis and treatment of the main infant and female pathologies. These results are attributable mainly to the improved living conditions of the Italian population and to the expansion of basic paediatric care, as guaranteed at the national level by Act No. 833 of 23 December 1978 establishing the National Health Service.

147. Figures provided by the Ministry of Health show that the perinatal mortality rate (stillbirths and deaths during the first week of life per 1,000 live births) fell from 42.1 in the period from 1966 to 1977, to 17.5 in 1980, 11 in 1989 and 10.4 in 1991 (provisional figures). The infant mortality rate (deaths before one year of age per 1,000 live births) fell from 46.9 during the period 1966-1967 to 14.5 in 1980, 8.5 in 1989 and 8.2 in 1991 (provisional figure).

D. Compulsory vaccinations

148. Measures concerning compulsory vaccinations for the protection of the health of children include:

(a) Act No. 891 of 6 June 1939 (vaccination against diphtheria);

(b) Act No. 292 of 5 March 1963 (vaccination against diphtheria);

(c) Act No. 165 of 4 February 1966 (vaccination against poliomyelitis);

(d) Act No. 165 of 27 May 1991 (vaccination against hepatitis B).

149. Vaccination against tuberculosis is also compulsory for children between 5 and 15 years of age having a negative cuti-reaction, tubercular children or children living in a home environment with tuberculosis or former tuberculosis sufferers or in underdeveloped areas with a high incidence of tuberculosis. In a recent ruling, the Constitutional Court found the refusal of parents to allow their child to be subjected to compulsory vaccination to be "conduct prejudicial to the child", within the meaning of article 333 of the Civil Code, and confirmed the authority of the Juvenile Court to order the vaccinations to be carried out at the request of members of the family, of the Procurator General's Office or on its own initiative (Constitutional Court, decision No. 132, 16-27 March 1992).

E. Exemption from health costs

150. An act passed very recently (Act No. 537 of 24 December 1993) waives the costs of basic medication and of diagnostic and specialist services for children under 10 years of age, from 1 January 1994 onwards.

Article 26

Right to social security

Family allowances

151. The Act of 13 May 1988 introduced "core-family allowances" to replace all other existing types of family allowance. Under this Act, the core family consists of the husband and wife, children under 18 years of age, or above that age if they are unable to work because of a physical or mental infirmity or deficiency. The core family may also include, in addition to children, brothers, sisters, grandchildren and nephews and nieces under 18 years of age or above that age when prevented from working by a physical or mental infirmity or disability, if they are orphaned and are not entitled to a pension. The core family may also consist of one person only, when such person is entitled to a survivor's benefit and is more than 18 years of age or is prevented from engaging in any remunerated activity by a physical or mental infirmity or disability.

152. The allowance is in proportion to the number of members of the family and to family income. Income is increased by 10 million lira for any core family including persons completely or permanently prevented by physical or mental infirmity or disability from engaging in any remunerated activity or minors experiencing permanent difficulties in performing tasks and functions normal for their age.

Article 27

Right to an adequate standard of living

153. Under Act No. 524 of 23 December 1992, the Italian Government authorized ratification of the Convention between States members of the European Community on the simplification of procedures for the collection of food credits, adopted in Rome on 6 November 1990. The provisions of the Convention will be applied and enforced by a central authority: the Central Office for Juvenile Justice of the Ministry of Justice has been designated for this task. The procedures laid down in the Convention for cooperation between central authorities are intended to facilitate the collection of food allowances without cost to recipients.

Article 28

Right to education

A. Compulsory and free primary education

154. The principle of compulsory and free primary education laid down in article 28, paragraph 1 (a), of the Convention has always been considered as a fundamental principle of the Italian education system. It is also guaranteed by the Constitution, article 34 of which provides that "schools shall be open to all", that "basic education, which shall last for not less than eight years, shall be compulsory and free" and that "able and deserving children shall have access to the highest levels of education, even if they are without financial resources".

155. The Constitution guarantees freedom of education, the duty of the State to provide a network of schools open to all without distinction, the right of private individuals to open schools at no cost to the State, the duty of parents to provide their children with schooling for at least eight years and free and compulsory education in State schools. The official language in schools is Italian. Nevertheless, in some areas populated by other language groups, the use of the local language in education is officially permitted.

B. School administration in Italy

156. Italian schools are administered at the central and local levels. At the central level, the Ministry of Education exercises general supervision and coordinates all educational activities conducted in Italy by public and private establishments, sets curricula, conducts educational research and promotional activities, and administers teaching and non-teaching staff. At the local level, the Ministry of Education is represented by regional and provincial education departments: in the regions by regional school directorates and at the provincial level by school inspectors.

157. Under the general guidelines set out in national legislation, all regions have regulatory and administrative powers regarding school attendance, vocational training and the establishment and building of schools. The provinces provide premises, equipment, services and non-teaching staff. The municipalities manage on their own account, or on delegation by the regions or provinces, the services necessary for the operation of schools within the commune so that young residents of each commune have access to compulsory education, higher education or vocational training, regardless of their financial or physical status. The communes are responsible for providing school bus services, meals in cafeterias within or outside the school, either free of charge or at reduced cost depending on family income, vouchers for the purchase of text books and cash subsidies.

C. The Italian school system

158. The Italian school system is organized as follows: (a) nursery schools; (b) primary (elementary) schools; (c) junior secondary schools; (d) senior secondary schools.

1. Nursery schools

159. State nursery schools were introduced under Act No. 944 of 18 March 1968. Attendance is not compulsory. They accept children from three to six years of age, including those with learning and adjustment difficulties. The presence of children with difficulties or handicaps is actually considered a generally enriching factor. Children are divided into classes of not less than 14 and not more than 28 pupils. State nursery schools are free, but families are requested to make a contribution towards school bus services and meals, which are provided by the commune.

2. Primary (elementary) schools

160. Between 1985 and 1990, primary education in Italy underwent a far-reaching reorganization culminating in the adoption of Act No. 148 of 5 June 1990 on the reform of the primary school system. Primary school is compulsory for children of 6 to 11 years of age. Children may also attend private schools or receive instruction at home. In the latter case, the State reserves the right to test the standard of education achieved by requiring pupils to sit a final examination.

161. Primary school consists of five levels, divided into two cycles corresponding to the stages of the child's development. The first cycle comprises two preparatory years devoted to functional literacy and the second cycle gradually introduces the pupil to the world of conceptual learning. The maximum number of pupils per class is 25 (20 when there is a handicapped pupil requiring the assistance of a teaching aide to help the integration and learning process).

3. Junior secondary schools

162. Junior secondary education, introduced under Act No. 1859 of 31 December 1962, lasts three years and is compulsory and free. For pupils who have completed primary school, it represents the last stage of compulsory education. To be admitted, pupils must pass the primary school certificate examination, which is usually taken at 11 years of age. The subjects taught at junior secondary level are the following: religion, Italian, history, civics, geography, living language, mathematics, chemistry, physics, natural sciences, technical education, art, music and physical education.

163. There are 30 hours of compulsory classes per week - 5 hours a day from Monday to Saturday - divided among the various subjects; each lesson lasts 60 minutes. At the request of a sufficient number of families to justify the formation of one or more classes, the school may decide to increase the hours of instruction to 36-40 hours per week. These hours are used for supplementary activities or extra instruction.

4. Senior secondary schools

164. After completing the compulsory phase of education and passing the junior secondary school certificate, pupils may embark on studies lasting three, four or five years, after which they may choose between continuing their studies in higher education or entering the labour market.

165. Senior secondary schools are divided into the following categories:

(a) Classical scientific and teacher training (primary school), divided into classics schools, science schools and teacher training institutes and schools;

(b) Art (art schools and institutes);

(c) Technical (technical institutes);

(d) Vocational (vocational institutes).

D. Educational assistance

166. Educational assistance covers the free provision of text books, school materials and transport. In particular, Act No. 719 of 10 August 1964 stipulates that school text books are free for all elementary school pupils. At primary school level, the existence of a broad network of schools makes it easy to comply with educational requirements. Article 34 of Act No. 1073 of 24 July 1962 provides for the free transport of junior secondary pupils living in the vicinity of schools.

167. Senior secondary school fees are kept very low, as part of a policy for facilitating access to education in general. In addition, there is a system whereby school fees can be waived for economic reasons or for merit. Legislation adopted at the regional level provides for financial assistance in needy cases.

168. As regards higher education, university registration fees are also very low and not at all representative of the actual costs of the service provided. Under the Act on the right to a university education, the State is obligated to lay down guidelines and criteria guaranteeing the exercise of this right. The regions are responsible for ensuring the overall exercise of the right, by providing collective facilities (meals and accommodation) and awarding scholarships.

E. School attendance

169. In 1989, the Ministry of Education launched a national plan to encourage regular school attendance and to combat the phenomenon of drop-outs during the period of compulsory education (irregular attendance, truancy or examination failure). The plan provides, among other things, for sectoral projects based on inter-institutional cooperation and on the "research - action" approach, so as to determine the causes (internal and external) and enable appropriate measures to be taken. The plan is currently being implemented on a trial basis in the geographical areas where this problem is particularly serious.

Article 29

Aims of education

170. The entire curriculum of the Italian school system at all levels is aimed at promoting respect for and awareness of human rights and fundamental freedoms in conformity with the principles laid down in the Constitution and the Universal Declaration of Human Rights. Presidential Decree No. 417 of 21 May 1974 has special significance in this respect: "Teaching is considered to be an activity aimed at transmitting culture, contributing to the development of culture and encouraging young people to take part in this process and fully to develop their personality".

171. Promotion of respect for and awareness of cultural and national values in children is one of the basic principles of Italian school curricula of all types and levels. Respect for parents is included in the enhancement of the role of the family and the school-family relationship. Education aimed at respect for civilizations different from the child's own and at peace and international understanding is part of school curricula and has been emphasized in recent years under the overall theme, "intercultural education".

172. The most recent initiatives in this regard include Ministerial Circular No. 15324 of 7 March 1992, which relates to intercultural dialogue week and states: "The goals to be achieved are to raise awareness of the positive value of relationships with others in the various types of multicultural societies (the world as an interdependent human society; Europe in the current process of economic and political integration; national societies dealing with the presence of minorities and immigrants) and therefore to affirm a culture based on respect, solidarity and peaceful co-existence".

173. Italian school curricula also endorse the principle of the equality of sexes, races, languages, religions and political opinions, as embodied in article 3 of the Constitution. This principle underlies all instruction and is aimed at preventing any form of discrimination. Environmental education is also an integral part of school curricula, including instruction in natural sciences and geography.

174. Article 33 of the Constitution grants communities and individuals the right to establish schools and educational institutions, without burdening the State budget. The Constitution stipulates that "The law, when laying down the rights and obligations of non-public schools requesting approval, must guarantee them complete freedom and their pupils scholastic instruction equivalent to that of pupils in public schools" (art. 33, para. 4).

Curricula and teaching aims of the Italian school system

175. The underlying principles of Italian school curricula are illustrated in the three sections below, with special emphasis on schools attended by minors.

1. Nursery schools

176. The new teaching guidelines contained in the Ministerial Decree of 3 June 1991 confirmed the substantive and institutional autonomy of the nursery school. The following are the goals of the nursery school as set forth in the new guidelines: strengthening of the child's identity from the physical, intellectual and psychodynamic point of view; gradual attainment of independence; development of capacities, especially sensorial, perceptive, motor, linguistic and intellectual.

2. Primary (elementary) schools

177. Article 1 of the Act reforming the elementary school system (No. 149 of 5 June 1990) states: "As a component of compulsory education, elementary schools shall work towards moulding individuals and future citizens according to the principles embodied in the Constitution while respecting and enhancing individual, social and cultural differences. They are aimed at the full development of the child's personality (...)". This theme is developed in primary school through classes in democratic co-existence and in secondary school through civics courses.

3. First cycle of secondary education (junior secondary schools)

178. Act No. 1859 of 31 December 1962, introducing the first cycle of secondary education, states that it "aims to promote the moulding of individuals and future citizens in accordance with the principles embodied in the Constitution and to guide young people in their choice of their studies" (art. 1).

179. The first cycle of secondary education has undergone repeated changes as far as its curricula and evaluation system are concerned. The general introduction to the text containing the new curricula introduced in 1979 defines the first cycle of secondary education as a school for training, guidance and preparation for life. This level of education is aimed at providing children with opportunities for developing their personalities in every area - moral, social, intellectual, emotional, operational and creative. Teaching must therefore be adapted to the mental and physical rates of development and maturity levels of pupils between 11 and 14 years of age who are in the critical transitional phase between childhood and adolescence. The programme of education and instruction is the instrument that makes it possible to adapt teaching both to the needs of each pupil and to the specific situation of each class and each school.

180. The organization and contents of the curricula in force since 1962 were amended by the Ministerial Decree of 9 February 1979 and are currently applicable. The text defines the goals and contents of each subject from the point of view of general content and methodological aspects. The teaching staff of each school is then free to adapt the curriculum to their specific situation by making independent choices as to both method and contents as to introducing policies on an experimental basis, if necessary; at staff meetings, it is adapted to each class and to the pupils' level and experimental and interdisciplinary initiatives are also introduced; the individual teacher incorporates it into his own programme of work.

Article 30

Cultural, religious and linguistic rights

181. The Italian Constitution recognizes and guarantees inviolable human rights (art. 2) and is based on full respect for and protection of linguistic minorities (art. 6). Another undeniable principle is the right freely to practise any religion (art. 8), in any form whatsoever, individually or in groups, as well as the right to propagate it or practise it in private or public (art. 19).

182. Provision is made for the incorporation of foreign pupils into Italian schools according to the principle of equality of rights and validation of the language and culture of origin, both for nationals of other European Community countries (Presidential Decree No. 722 of 10 September 1982) and for nationals of countries not belonging to the Community (Act No. 943 of 10 December 1986, art. 9). The Italian school system, whose curricula and activities are based on the principle of intercultural education, fosters the recognition and enhancement of different cultural identities by bringing together foreign and Italian pupils in an effort to achieve mutual cultural enrichment.

183. In addition, the Department of Social Affairs, in agreement with the Ministry of Education, issued a circular dated 4 October 1993, which states that, in view of the need to protect the right to education of minors who are not nationals of Community countries and who are in an irregular or clandestine situation in Italian territory and in accordance with the United Nations Convention on the Rights of the Child, "children in a regular situation who are members of families in a regular situation ... have the same rights as Italian children; children in irregular situations who are members of families in regular situations may be registered in school subject to, and pending, the filing of regularization proceedings (family reunification), even if the minor is already in Italian territory; and children in irregular situations who are members of families in irregular situations may be registered in school with reservations. The guardianship judge may be asked to intervene in order to guarantee the minors' right to education". The circular establishes the principle that "registration in school shall in no way be put forward to justify regularization of the minor's presence or that of his parents in Italian territory".

184. More recently, the Ministry of Education promulgated a circular (No. 5 of 12 January 1994) on the need to protect the right to education of foreign minors who have not complied with the regulations for residing in Italy, i.e. their right to be registered in and attend educational establishments of all types and levels in Italy, in accordance with the principles set forth in the Convention on the Rights of the Child. According to the contents of the circular, the child's registration is subject to the normalization of the situation of those concerned.

Article 31

Right to rest and leisure

The framework law

185. The framework law (see para. 4) provides that, to the extent of their respective competence, public administrations, regions and local communities develop and encourage literature for children and adolescents by providing every school with a library accessible to minors and, in cooperation with local cultural institutions (museums, theatres, conservatories, etc.), promote initiatives aimed at introducing minors into the world of art, music, history, etc. (art. 10). The draft law also guarantees the right of minors to physical education; the State, regions and local communities have to make exercise available to all children, especially those who are most in need of it.

Article 32

Protection against economic exploitation

186. Article 37 of the Italian Constitution stipulates that the law sets a minimum age for admission to paid labour, indicates that the protection of working minors is a basic duty of the State and lays down the principle of equal pay for equal work. Article 2 of the Civil Code sets the age of majority at 18 years and stipulates that, when special laws indicate a different age limit for job performance, minors are entitled to exercise all the rights and actions connected with the work relationship. In the framework of the regulations on work by minors, Act No. 977 of 17 October 1967 (Protection of working children and adolescents) is especially important. It considers children to be persons under 15 years of age and adolescents to be persons from 15 to 18 years of age. It contains the rules governing minimum age for admission to labour and the work schedules of minors.

A. Minimum age for admission to labour

187. The minimum age for admission to labour is set at 15 years, with the exception of agricultural work and domestic work, for which the minimum age is 14 years, on condition that the professional activity is compatible with the protection of the minor's health and does not violate school obligations. Minors having reached the age of 14 may perform light work within the limits mentioned above, provided that it does not consist of industrial activities, night work or work during holidays.

188. The minimum age is raised to 16 years for dangerous, difficult or unhealthy work. The same age limit applies to the cleaning and maintenance of motors and moving machine transmissions, as well as all types of work involving travel. However, it is strictly prohibited to assign minors under 18 years of age to any underground work in quarries, mines, peatbogs or galleries or the handling or carrying of heavy loads on wheel barrows or hand carts, when such work is performed under difficult and dangerous conditions; or extractions in opencast quarries, mines or peatbogs, loading and unloading in the Sicilian sulphur works or the operating or driving of vans for the retailing of alcoholic beverages.

189. In accordance with Act No. 903/77 on equality between men and women, the above-mentioned laws apply on the same basis to male and female minors. Act No. 977/67 also prohibits the use of minors in cinemas and in the preparation of entertainment of all kinds; however, in such cases, children may be authorized by the provincial labour inspectorate to take part in the preparation or showing of films, with the approval of the prefects and the agreement of the parents or guardian, provided that the work is not dangerous and does not last more than 24 hours.

B. Medical examinations

190. Act No. 977/77 also stipulates that, in addition to the minimum age requirement, minors must, in order to work, be declared fit following a thorough medical examination. Working minors must in any event undergo periodic medical visits, at regular intervals no more than one year apart. After every medical visit, a certificate must be issued and attached to the work record.

C. Night work

191. Act No. 977/67 also states that minors cannot work at night. For the purposes of this provision, "night" is considered to mean: for minors up to 16 years of age, a period of at least 12 consecutive hours including the interval between 10 p.m. and 6 a.m.; for minors over 16 years of age, a period of at least 12 consecutive hours including the interval between 10 p.m. and 5 a.m.; for minors not released from school obligations, a period of at least 14 consecutive hours including the interval between 8 p.m. and 8 a.m.

192. Minors 16 years of age and over can work at night on an exceptional basis and for the time strictly required in case of a compelling event that hinders the operation of the business. The employer must immediately inform the labour inspectorate, indicating which compelling conditions have made this necessary, the number of minors being asked to work and their work hours.

D. Work schedules

193. The Act sets a maximum work schedule of 35 hours per week and 7 hours per day for children and 40 hours per week and 8 hours per day for adolescents. It also stipulates that minors cannot work in shifts except when specifically authorized by the provincial labour inspectorate. For activities involving the carrying of heavy loads, the Act sets a time-limit of four hours per day and a quantitative limit of 5 to 20 kg.

194. A minor's work schedule cannot exceed 4½ hours without interruption. When the daily schedule is longer, it must be interrupted by an interim rest period of at least one hour, which may be reduced to one half hour under collective agreements. In the case of dangerous or difficult work, the provincial labour inspectorate can prohibit the performance of an activity for over three hours without interruption by setting the length of the interim rest period. Minors are also entitled to annual paid leave of not less than 30 days for children under 16 years of age and 20 days for minors under 18 years of age, as well as a weekly rest period.

E. Apprenticeships and vocational training contracts

195. Minors (and persons of majority age but, less than 20 years old) can be hired under an apprenticeship contract. Apprenticeship contracts, which are governed by Act No. 35 of 1955 (and its successive amendments), stipulate that employers must provide or ensure the provision of the training required by an apprentice in order to become a skilled worker. Young people between 15 and 29 years of age can also be hired under vocational training contracts, in accordance with Act No. 863 of 1984. To hire under this type of contract, a training project must be drawn up and submitted to the regional employment commission for approval.

F. Supervision of work by minors

196. Through its local bodies (provincial labour inspectorates), the Ministry of Labour exercises supervision over work by minors, both through its normal monitoring activities and through special supervision geared to punish violations of the law. The data collected by the Ministry of Labour indicate that violations of the prohibitions laid down in Act No. 977/67 have not been a particular problem. Labour inspectorate activity reports indicate that, of all offences relating to protection of working minors in 1991, approximately 2 per cent involved violations of the prohibition against night work and failure to respect the limits on work schedules stipulated in the legislation.

197. Research on case-law has revealed no particular activity in either the criminal or civil sphere. This shows that there have been few significant violations of the legislation in force. It should, however, be borne in mind that, when violations are reported or observed by the monitoring body, administrative conciliation with extinction of the offence is possible.

198. In both the political and administrative areas, however, there is still a perceived need to combat clandestine work by minors and violations of their school obligations, and this is done through monitoring and legal proceedings. With regard to school obligations, in particular, Decree-Law No. 391 of 1993, as converted and amended by Act No. 484 of 1993, adopted measures against school absenteeism on behalf of the regions and cities where it occurs the most and provided financing and provisions relating to teaching staff.

G. Income and employment policy

199. On 3 July 1993, the Government and workers' and employers' organizations signed a protocol of agreement on income and employment policy, contractual provisions, labour policy and support for the system of production, in which they agreed on the general features of an employment and income policy. As regards issues under the Convention on the Rights of the Child, it should be noted that this protocol confirms the importance of systematic coordination between the educational world of young people and the working world. It also confirms the commitment to raise the age of compulsory schooling to 16 years, which would entail a raising of the age limit for admission to labour. In addition, it also stresses the importance of maintaining the traditional role of apprenticeship contracts, i.e. that of providing theoretical and practical access to technical skills, and of redefining vocational training contracts.

H. Initiatives at the community and international levels

200. A proposal for guidelines on the protection of young people in connection with labour matters is currently being discussed at the European Community level. The proposal, originally submitted by the Commission of the European Communities, has been reformulated to take the explicit opinion of the European Parliament into account. Italy's position in this respect is that any provision adopted at the European level must guarantee full respect for the rights of the child and be in conformity with the principles laid down in the ILO Conventions and the European Social Charter of the Council of Europe.

201. At the international level, Italy has ratified ILO Convention No. 183 concerning the minimum age of admission to employment (which replaced the previous Conventions on the subject) and ILO Conventions Nos. 79 and 90 on night work by minors.

Article 33

Protection against the illicit use of narcotic drugs

202. Among the provisions which are contained in Italian legislation, are in keeping with the principles embodied in article 33 of the Convention and are designed to ensure that children should be protected from the illicit use of narcotic drugs and psychotropic substances, it should be noted that article 75 of Presidential Decree No. 309 of 9 October 1990 (Single text of laws on the regulation of narcotic drugs and psychotropic substances and on the prevention, treatment and rehabilitation of drug addictions) contains special standards for minors addicted to narcotic drugs, who are not subject to criminal penalties. The following are among the stipulations of this law:

(a) If administrative penalties against them do not prove to be effective, the Prefect defines the procedure by inviting the minor to discontinue the use of narcotic drugs and warning him of the risks he is taking;

(b) If possible and necessary, the Prefect summons the members of the minor's family, informs them of the situation and puts them in contact with therapeutic and rehabilitation facilities in the territory of the province.

203. Act No. 209/90 also makes anyone who assigns or authorizes the assignment of a public establishment or private club or any other building or vehicle to a meeting of persons using narcotic drugs or psychotropic substances liable to 1 to 4 years' imprisonment. The penalty is increased by one half to two thirds if a person under 18 years of age takes part in the meeting (art. 79). An increased penalty is also imposed on anyone who illegally produces or markets narcotic drugs or psychotropic substances and supplies them to or simply intends them for minors or sells them near or inside schools of any kind or young people's communities (art. 80). Act No. 309/90 also provides for an increased penalty in the case of anyone who publicly encourages a minor illicitly to use narcotic drugs or psychotropic substances (art. 82).

204. In addition, Act No. 309/90 stipulates that the Ministry of Education is responsible for promoting and coordinating activities involving health education and information on the potential damages of alcoholism, cigarette smoking and the use of narcotic drugs or psychotropic substances, as well as the diseases associated with them. Such activities must be incorporated into ordinary educational activities in schools of all kinds and at all levels, paying particular attention to minors (art. 104).

205. Article 730 of the Penal Code makes anyone who, being authorized to sell or market medicinal products, provides a person under 16 years of age with harmful substances or narcotic drugs, even on medical prescription, liable to a fine. Anyone selling or supplying tobacco to a person under 14 years of age is also liable to a fine.

Article 34

Protection from sexual exploitation and sexual abuse

206. Italian legislation protects children from all forms of sexual exploitation and abuse, in accordance with the principles embodied in article 34 of the Convention. In this respect, reference must be made to some provisions of the Penal Code contained in the chapters relating to crimes against sexual freedom (arts. 519 to 526) and indecent behaviour and affronts to sexual dignity (arts. 527 to 538) and to some legislation which specifically provides for an increase in the penalty when a minor is involved.

207. When an offence against sexual freedom or sexual dignity or an act of indecent behaviour is committed against a minor under 14 years of age, the offender may not plead ignorance of the victim's age as an exonerating circumstance (art. 539 of the Penal Code).

A. Protection of children from sexual abuse

208. The following provisions of the Penal Code are intended to protect children from sexual abuse and sexual exploitation:

(a) Under article 519 of the Penal Code, anyone who, through violence or intimidation, forces a person to engage in sexual intercourse is liable to 3 to 10 years' imprisonment. The same penalty applies to anyone who engages in sexual intercourse with a minor under 14 years of age at the time of the act or under 16 years of age if the offender is an ascendant, legal guardian or person responsible for the care, education, instruction, supervision or custody of the minor. In this respect, section 36 of Act No. 104 of 5 February 1992 provides for an increase in the penalty if the victim of the offence is handicapped;

(b) Article 519, paragraph 2, of the Penal Code punishes by imprisonment anyone who forces or incites a person in one of the above-mentioned categories (including, therefore, minors) to commit lewd acts on themselves, on the person of the offender or on any other person;

(c) Article 522, paragraph 2, of the Penal Code makes anyone who, through violence, intimidation or deceit, abducts or detains, for the purposes of marriage, a person of the opposite sex who is over 14 years of age and under 18 liable to 2 to 5 years' imprisonment;

(d) Article 523 of the Penal Code makes anyone who, through violence, intimidation or deceit, abducts or detains a minor in order to engage in lewd acts liable to 3 to 5 years' imprisonment;

(e) Article 524 of the Penal Code establishes that the penalties provided for in the preceding articles also apply to anyone who, without resorting to violence, intimidation or deceit, is guilty of offences against a minor under 14 years of age;

(f) Article 526 of the Penal Code makes anyone who seduces a female minor by a promise of marriage, having misled her about his status as a married person liable to up to two years' imprisonment;

(g) Article 530 of the Penal Code makes anyone who commits lewd acts on, or in the presence of, a minor under 16 years of age and anyone who incites a young person under 16 years of age to commit lewd acts on themselves liable to up to three years' imprisonment;

(h) Article 564 of the Penal Code makes anyone who, in a manner which results in a public scandal, commits incest with a descendant, an ascendant, a direct relation by marriage, a brother or sister liable to 1 to 5 years' imprisonment. The penalty is increased in the event of an incestuous relationship. If the incest is committed by a person of full age with a minor under the age of 18, the penalty for the person of full age is increased. If one of the parents is convicted, that person is deprived of parental authority over the child.

B. Protection of children from prostitution

209. The offence of exploiting prostitution is dealt with in Act No. 75 of 20 February 1958, which is still in force. This Act makes anyone who, inter alia, recruits a person in order to make him engage in prostitution, incites a woman of full age to engage in prostitution, promotes or exploits prostitution in any manner whatsoever or habitually allows a person to engage in prostitution in establishments which are open to the public or may be used for entertainment and of which he or she is the owner or manager (art. 3) liable to 2 to 6 years' imprisonment. The other types of offence referred to in Act No. 75/58, which pertain more specifically to the sale of or traffic in children, will be dealt with in the comments on article 35 of the Convention.

210. Act No. 75/58 provides that the penalty is doubled if the acts harm a person who is under 21 years of age (art. 4, para. 2) or if the offender is an ascendant, a relation by marriage, the husband, brother, sister, father or mother (art. 4, para. 3). It must also be pointed out that the penalty is increased by one third to one half if the victim of the offence is handicapped (art. 36, Act No. 104 of 5 February 1992).

Article 35

Protection from the abduction of, the sale of or traffic in children

A. Sale of or traffic in children

211. With regard to the traffic in and exploitation of children, attention is drawn to Act No. 75 of 20 February 1958 (already referred to in the comments on art. 34 of the Convention; see paras. 209 and 210), which reorganized offences relating to prostitution, as provided for in articles 531 to 536 of the Penal Code. This Act prescribes a prison sentence of 2 to 6 years for anyone who incites a person to go to the territory of another State in order to engage in prostitution there or who facilitates the departure of that person; and for anyone who engages in an activity in the form of national or foreign associations or organizations specializing in the recruitment of persons for the purposes of prostitution or who facilitates or promotes, in any way and by any means whatsoever, the activities or purposes of these associations and organizations (art. 3, paras. 6 and 7). The penalty is doubled if the acts are committed against a person of under 21 years of age (art. 4, para. 2). These crimes are punishable even if they are committed by an Italian citizen in a foreign country (art. 537 of the Penal Code).

212. Act No. 75/58 establishes that persons under 21 years of age who habitually or totally earn their living from prostitution will be repatriated and returned to their family once it has been ascertained that the latter is prepared to receive them. If not, the president of the court places them in homes for young persons (art. 10).

B. Abduction of children

213. As far as the abduction of children is concerned, reference should be made to the provisions of the Penal Code which relate to the offence of kidnapping and state that anyone who deprives another person of his personal freedom is liable to 6 months to 8 years' imprisonment. If the acts are committed against an ascendant, descendant or spouse, the penalty is 1 to 10 years' imprisonment (art. 605 of the Penal Code). Moreover, article 630 of the Penal Code punishes anyone who abducts a person for the purpose of obtaining unlawful profit for himself or others as the price of release. The penalty range is between 25 and 30 years' imprisonment. On the basis of article 61 of the Penal Code, if either of the above-mentioned acts are committed against a minor, this constitutes an aggravating circumstance which increases the penalty.

214. Attention is also drawn to articles 573 and 574 of the Penal Code, which make imprisonment of up to 2 years and from 1 to 3 years, respectively, the penalty for anyone who abducts (a) a minor over the age of 14 with his consent (art. 573); (b) a minor over the age of 14 without his consent (art. 574); or (c) a minor under the age of 14 (art. 574) from the father, mother, person exercising parental authority or legal guardian or who detains the minor against the will of the parent or legal guardian.

Article 37

Torture or other cruel, inhuman or degrading treatment or punishment, capital punishment, deprivation of liberty

A. Torture or cruel, inhuman or degrading treatment or punishment

215. Torture and other cruel, inhuman or degrading treatment or punishment are unconditionally regarded as being contrary to the principles of Italian legislation. In this respect, article 27 of the Constitution states that "penalties may not consist of inhuman treatment and shall be designed to rehabilitate the convicted person".

216. Attention is drawn to Act No. 354 of 26 July 1975 ("Prison rules and provisions on the enforcement of prison sentences and measures restricting freedom"), which provides that treatment in prison must be humane and must ensure respect for the dignity of the person (art. 1, para. 1).

217. Italy has also signed many international instruments on the subject. The Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms was signed in Rome on 4 November 1950 and ratified by Italy on 26 October 1955. Article 3 of the Convention stipulates that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment". The Council of Europe European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, adopted in Strasbourg on 26 November 1987, is based on this principle and is primarily designed to extend the scope of article 3, introduce detailed rules on various aspects of this question, set up specific monitoring and safeguard procedures by means of on-site inspections. The Convention was ratified by Italy and implemented by Act No. 7 of 2 January 1989.

218. In addition, Italy has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted by the United Nations General Assembly in New York on 10 December 1984 and implemented it through Act No. 488 of 3 November 1988 (which entered into force on 11 February 1989). It has also deposited the declaration recognizing the competence of the Committee against Torture, set up under article 17 of the Convention, in respect of article 21 (disputes between States) and article 22 (individual communications).

219. The International Covenant on Civil and Political Rights, which was adopted by the United Nations General Assembly in New York on 16 December 1966 and article 7 of which states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, was ratified by Italy on 16 November 1966 and implemented by Act No. 881 of 25 October 1977.

B. Capital punishment

220. In Italy, capital punishment was abolished and replaced by life imprisonment by Decree-Law No. 244 of 20 August 1944 abolishing capital punishment in the Penal Code. Furthermore, article 27, last paragraph, of the Constitution states that the death penalty is not allowed save in cases specified by the military laws of war. Attention is also drawn to

Decree-Law No. 21 of 22 January 1948, which contains provision as a result of the abolition of capital punishment and abolished capital punishment for offences covered by special laws differing from military laws.

C. Life imprisonment

221. A recent decision of the Constitutional Court (1-6 April 1993, No. 140), which recalls the wording of articles 2 and 27 of the Constitution, held that the sentencing of a minor to life imprisonment would not only be contrary to the requirement of rehabilitation by preventing the convicted person from receiving education appropriate to his age, but would also be inconsistent with the "current precepts of humane treatment which are now part of the conscience of society and are interpreted in the many international conventions for the protection of children to which Italy has acceded". In addition, life imprisonment is contrary to article 31, paragraph 2, of the Constitution, which establishes "the duty to safeguard children" and makes it impossible to treat a minor as an adult in order to satisfy an "apparent requirement of technical equality". Although the Constitutional Court did not state that it was in favour of the abolition of life imprisonment for minors, it recognized that, in order to achieve this aim, the lawmakers should take steps to adapt legislation to the above-mentioned principles by subjecting minors to different treatment to that resulting from the general system of punishment.

D. Imprisonment of minors

222. The provisions on the arrest, detention or imprisonment of young persons are contained in Presidential Decree No. 448 of 22 September 1988 ("Approval of the provisions on criminal proceedings instituted against minors", Chapter II ("Measures in respect of personal freedom")). The main relevant provisions contained in the Decree are set out below. For further details on criminal proceedings involving minors, reference should be made to the comments on article 40 of the Convention (see paras. 231 et seq. below).

223. Article 16, which deals with arrest in the act of committing an offence, provides that criminal investigation officers and police detectives must take account of the seriousness of the offence and the age and personality of the minor. If the minor is arrested and taken into police custody, police officers and detectives must immediately inform the public prosecutor, the person exercising parental authority and any person who may be responsible for the custody of the minor before handing him over to the department responsible for the administration of juvenile justice.

224. When the prosecution service is informed that a minor has been arrested or taken into police custody, it orders his immediate transfer to a reception centre, a public facility or the family home, where he must remain at its disposal (art. 18). Police officers or detectives may take a minor arrested in the act of committing a particularly serious offence to their offices and hold him for as long as strictly necessary until he is handed over to the person exercising parental authority, to the person responsible for his custody or to a person appointed by the court. In any event, a minor may not be detained for more than 12 hours (art. 18 bis).

225. The following interim measures apply only to minors who have been charged and handed over to the services responsible for the administration of juvenile justice:

(a) Instructions with regard to their studies, work or other activities that are useful for their education;

(b) Order to stay at home or in any other private dwelling;

(c) Placement in a public or approved facility;

(d) Pre-trial detention for more serious offences.

E. Treatment of young people in prison

226. Young people under 18 years of age are sent to establishments different from adult prisons or to separate sections of these establishments. Young people under 18 years of age who are considered to be habitual or professional offenders or who show a predisposition to delinquency are sent to special establishments or to special sections of prisons for adult offenders.

227. Minors suffering from a physical or mental handicap are sent to special homes for young people who are physically or mentally handicapped or to special sections of adult prisons.

228. The regulations in force contain special provisions on the characteristics of establishments and sections for minors and the training of specialized supervisory staff and instructors. Prison regulations stipulate that particular attention must be paid to maintaining, improving or re-establishing relations with the families of detainees and prisoners, including minors, who must also be allowed immediately to inform their spouses that they have been imprisoned or transferred or are ill.

Article 40

Rights of children accused of having infringed the penal law

A. General principles of penal law

229. Italian legislation complies fully with the principle embodied in article 40, paragraph 2 (a) of the Convention. In particular:

(a) Article 25, paragraph 2, of the Constitution stipulates that "no one may be punished save on the basis of a law which entered into force before the offence was committed";

(b) Article 1 of the Penal Code states that "no one may be punished for an act which is not expressly characterized as an offence by law or by penalties not provided for by law";

(c) With regard to successive penal laws, article 2 of the Penal Code establishes that "no one may be punished for an act which did not constitute an offence according to the law in force at the time it was committed" and

that "no one may be punished for an act which does not constitute an offence according to a subsequent law; and, if sentence has been imposed, the enforcement and penal consequences thereof shall cease".

230. Article 27, paragraph 2, of the Constitution, which states that "an accused person shall not be considered guilty until final sentence has been handed down", is consistent with the principle embodied in article 40, paragraph 2 (b) (i), of the Convention.

B. Children in Italian penal law

231. Italian legislation protects the position of children and regards minority as a reason for waiving or reducing a penalty. In particular, the following distinction is drawn with regard to the capacity of understanding and intent.

232. **Up to the age of 14, there is an absolute presumption that a minor has no capacity of understanding or intent and proof to the contrary is not admissible. In this respect, article 97 of the Penal Code states that "anyone who has not reached the age of 14 years at the time of the commission of the act may be held responsible". Nevertheless, a young offender, under 14 years of age who is considered to be dangerous may be liable (a) to security measures in a detention centre and placement under supervision; and (b) to administrative placement measures in a minors' social service or in a reformatory.**

233. **Between the ages of 14 and 18, there is no presumption (either of** capacity or of lack of capacity), but the court must ascertain in each case whether the person may be charged. In this connection, attention is drawn to article 98 of the Penal Code: "Anyone who has reached the age of 14 years, but not 18, at the time of the commission of the act may be held responsible if he has capacity of understanding and intent, but the punishment may be reduced". On this point, the Court of Cassation made it clear a long time ago that the minor's capacity of understanding and intent has to be assessed specifically in relation to the offence committed by taking account of his personality, the offence which he has allegedly committed and the circumstances in which it took place:

(a) If it is considered that the minor cannot be charged, he is acquitted, but, if he is regarded as dangerous, the above-mentioned measures may be applied to him;

(b) If it is considered that a minor aged under 18, but over 14, cannot be charged, criminal proceedings are instituted against him for the offence committed; he nevertheless receives a reduced penalty.

C. The criminal procedure applicable to juvenile delinquents

234. The provisions on the criminal procedure applicable to juvenile delinquents are contained in Presidential Decree No. 448 of 22 September 1988 ("Approval of the provisions on the criminal procedure applicable to juvenile delinquents"), which entered into force on 24 October 1989. This Decree considerably increased the emphasis on prevention and social rehabilitation

already inherent in Italian criminal procedure applicable to young offenders. Article 1 of this Decree establishes the procedural guidelines applicable to minors, by providing that the rules must be applied properly in the light of the personality and educational requirements of minors and by stipulating that the court must explain to every young defendant the significance of the proceedings at which he is present, as well as the content of and grounds (including those of an ethical and social nature) for the court's decisions. This is done in order to enable the young person to take part in the proceedings and to make him understand the implications of the criminal acts he has committed and the need for the measures adopted against him.

235. It is for the Juvenile Court to rule on offences committed by minors (art. 3). The following special judicial organs take part in proceedings against minors: the public prosecutor in the Juvenile Court; the investigating judge in the Juvenile Court; the public prosecutor in the Court of Appeal (juvenile section); and the judge responsible for the supervision of minors (art. 2). Moreover, a special section of the criminal investigation department with specialized staff has been set up in each public prosecutor's department in the Juvenile Court (art. 5).

236. Decree No. 448/88 also provides that, during criminal proceedings against minors, the public prosecutor and the judge must obtain information about the young person's personal, family and social circumstances, resources and background in order to ascertain whether he can be charged and the extent to which he is responsible, evaluate the social significance of the offence and take the relevant penal measures. To this end, information may be obtained informally from persons who have had contact with the young person and expert opinions may be sought (art. 9). The Decree further states that, at any point in the proceedings, the court may call on the services responsible for the administration of juvenile justice and those set up at the community level.

237. As a young offender is entitled to the assistance of defence counsel of his choice or appointed by the court (arts. 96 and 97 of the Code of Criminal Procedure), the Bar Council must draw up lists of defence counsel specialized in juvenile law (art. 11).

238. A juvenile delinquent is assured of emotional and psychological support by the presence of his parents or any other suitable person chosen by him and accepted by the court. In any event, provision is made for minors to receive assistance from the services responsible for the administration of juvenile justice (art. 12). Information or pictures which might make it possible to identify a minor involved in proceedings may not be published or disclosed (art. 13). Provision is also made for a juvenile police record (art. 14).

239. When the judge establishes that the defendant is a minor aged under 14, he may, at any point in the proceedings, even on his own initiative, dismiss the case, as no charge may be brought against the person (art. 26). In special circumstances, when the offence is a minor one and has not been repeated, the case may be dismissed so as not to jeopardize the young person's education. The judge rules in chambers after hearing the minor, the person exercising parental authority and the victim of the offence (art. 27).

240. The judge may suspend the proceedings if he considers that the personality of the minor should be assessed and that he should be examined by the services responsible for the administration of juvenile justice, together with local services, for the purpose of observation, treatment and support (art. 28). The court may overturn the judgement if, after the period of suspension has elapsed, it considers that probation has yielded beneficial results (art. 29).

241. When passing sentence, the court may replace a prison sentence of no more than two years by semi-detention or supervision (art. 30).

242. The accused and defence counsel who has a special power of attorney may lodge an appeal against the sentence within five days of the delivery of the judgement or of receiving notice thereof when it is given in absentia (art. 34). The provisions relating to proceedings before the Juvenile Court apply to the appeal procedure (art. 35).